G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Labor and Workforce Development
DIVISION:	Workers' Compensation
SUBJECT:	Mediation and Hearing Procedures
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 50-6-233(c) and 50-6-239(c)(1)
EFFECTIVE DATES:	June 1, 2015, through June 30, 2016
FISCAL IMPACT:	Negligible
STAFF RULE ABSTRACT:	This proposed rule change will allow testimony in expedited hearings to be taken by telephone or video.

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), ail 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 rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

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 proposed rule will have little, if any, impact on these entities.

(1)

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For Department of State Use Only

Sequence Number: 03-04-15
Rule ID(s): 5883
File Date: 3/3/15
Effective Date: 6/1/15

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 Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Troy Haley
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Revision Type (check all that apply):
x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-02-21	Mediation and Hearing Procedures
Rule Number	**Rule Title**
0800-02-21-.14	Expedited Hearing and Decision on the Record

(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 0800-02-21
Mediation and Hearing Procedures

Rule 0800-02-21-.14: Expedited Hearing and Decision on the Record is amended by adding the following new paragraph (4):

(1) After a case is placed on the docket, if there is a dispute over temporary disability or medical benefits, either party may request an expediting hearing of the issue of temporary disability or medical benefits by indicating its desire for an expedited hearing on the request for hearing form or by a filing a separate motion. The indication of the desire for an expedited hearing on the request for hearing form shall serve as the motion for expedited hearing.

(a) All motions for expedited hearing must be accompanied by affidavits and any other information demonstrating that the employee is entitled to temporary disability or medical benefits.

(b) Immediately upon receiving the motion, but in no event later than five (5) business days after the motion is filed with the clerk, the opposing party shall submit all information in its possession demonstrating that the employee is not entitled to temporary disability or medical benefits. The party shall also indicate if it believes that the motion should be set for an evidentiary hearing and provide an explanation of why a hearing is necessary.

(c) Seven (7) business days after the motion is filed with the clerk, the clerk shall compile the file and the motion shall be assigned to a workers' compensation judge. Upon receipt of the file, the judge shall have discretion to either set the matter for a hearing or enter an interlocutory order based on a review of the file upon determining that no additional information is needed to determine whether the employee is likely to prevail at a hearing on the merits of the claim.

(d) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the board of appeals in the manner provided by the Tennessee Workers' Compensation Law and these rules.

(e) An interlocutory order awarding or denying temporary disability or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.

(2) The parties may request that a case be decided by a workers' compensation judge on the record and a compensation order issued based on a judge's review of the written materials and without the benefit of a hearing.

(a) All cases in which the parties have agreed that the case should be submitted to the judge for an on-the-record determination will be placed on a separate docket for a decision on the record. The assigned workers' compensation judge shall determine whether an on-the-record determination is appropriate under the circumstances and may decline to issue a decision on the record and order the parties to appear for a hearing.

(b) If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the file number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge

for a decision on the record.

(3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge. If a motion to dismiss pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.

(4) A workers' compensation judge may, in conducting an expedited hearing, take testimony in any manner that is practical for the fair and effective resolution of the request for temporary disability and/or medical benefits including taking testimony from a witness by telephonic or video conferencing means.

Authority: T.C.A. § 50-6-233(c); T.C.A. § 50-6-239(c)(1).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 2/16/2015 (*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: February 6, 2015

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

SHARA HAMLETT STATE OF TENNESSEE NOTARY PUBLIC WILLIAMSON COUNTY

Subscribed and sworn to before me on: February 6, 2015

Notary Public Signature: Shara Hamlett

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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

Febry 19, 2015

Date

Department of State Use Only

Filed with the Department of State on: 3/3/15

Effective on: 6/1/15

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:	Rules: Licensing and Registration
STATUTORY AUTHORITY:	Sections 68-202-101 et seq. and 4-5-201 et seq.
EFFECTIVE DATES:	June 1, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The purpose of this rule is to bring the regulations of the Division of Radiological Health into compliance with various changes that the U.S. Nuclear Regulatory Commission (NRC) has made to Title 10 of the Code of Federal Regulations. This compatibility is required for Tennessee to remain an Agreement State. The rule amends Chapters 0400-20-04, 0400-20-05, 0400-20-08 and 0400-20-10 to update the requirements that regulate packaging and transportation of radioactive material, including: • Amendments pertaining to the notification process requiring licensees to provide advance notification to participating Federally-recognized Tribal governments regarding shipment of nuclear waste for any shipment that passes within or across their reservations. • Amendments to make technical corrections in certain parts of the regulations, including typographical and spelling errors, and other edits to update the Division's mailing address. • Deleting references to "related to irradiated reactor fuel" because Tennessee does not have regulatory authority over it. • Addition of language pertaining to Industrial Radiography training guidance that was previously omitted from the rules.

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), ail agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

All substantive changes in this rulemaking are required by the Nuclear Regulatory Commission ("NRC") and these amendments are consistent with the NRC approved state suggested regulations. Therefore, these substantive changes are exempt from the provisions of the Regulatory Flexibility Act of 2007, Acts 2007, § 6 of Public Chapter 464 because they are federally mandated. The non-substantive changes consist in changing the mailing address of the division in the regulations and results in no effect on 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.

No small business will bear the cost of the address change.

(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 is no additional reporting, recordkeeping or other administrative cost associated with the mailing address change.

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

This is no impact on small businesses resulting in the change of mailing address.

(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.

No alternative exists to achieve the change of mailing address.

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

A comparison is not needed to change the mailing address.

(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.

An exemption is not possible.

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 not have a financial impact on local governments.

(2)

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Sequence Number: 03-05-15
Rule ID(s): 5884-5887
File Date: 3-3-15
Effective Date: 6-1-15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Radiological Health
Contact Person:	Anthony Hogan
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Revision Type (check all that apply):

X 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**
0400-20-04	General Provisions
Rule Number	**Rule Title**
0400-20-04-.04	Definitions
0400-20-04-.11	Posting of Notices to Workers

Chapter Number	**Chapter Title**
0400-20-05	Standards for Protection Against Radiation
Rule Number	**Rule Title**
0400-20-05-.144	Reports of Planned Special Exposures

Chapter Number	**Chapter Title**
0400-20-08	Radiation Safety Requirements for Industrial Radiography
Rule Number	**Rule Title**
0400-20-08-.04	Equipment Control
0400-20-08-.05	Personal Radiation Safety Requirements for Radiographers and Radiographer's Assistants

Chapter Number	Chapter Title
0400-20-10	Licensing and Registration
Rule Number	**Rule Title**
0400-20-10-.16	Specific Terms and Conditions of Licenses
0400-20-10-.24	Registration
0400-20-10-.30	Packaging and Transportation of Radioactive Material
0400-20-10-.38	Appendix-Schedules

(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 0400-20-04
General Provisions

Amendments

Paragraph (1) of Rule 0400-20-04-.04 Definitions is amended by deleting it in its entirety and substituting instead the following:

(1) As used in these regulations, these terms have the definitions set forth below. (For additional definitions used only in Chapters 0400-20-05, 0400-20-06, 0400-20-07, 0400-20-08 and 0400-20-09, see Rules 0400-02-05-.32, 0400-20-06-.03, 0400-20-07-.05, 0400-20-08-.03 and 0400-20-09-.03.)

(a) 1. "A_1" means the maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Table A-1 of Schedule 10-6 in Rule 0400-20-10-.38, or may be derived in accordance with the procedures prescribed in Schedule 10-6 in Rule 0400-20-10-.38.

2. "A_2" means the maximum activity of radioactive material, other than special form material, LSA and SCO material, permitted in a Type A package. This value is either listed in Table A-1 of Schedule 10-6 in Rule 0400-20-10-.38, or may be derived in accordance with the procedure prescribed in Schedule 10-6 in Rule 0400-20-10-.38.

(b) "Accelerator-produced radioactive material" means any material made radioactive by a particle accelerator.

(c) "Agreement State" means any state with which the U.S. Nuclear Regulatory Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Statute 689).

(d) "Alert" means a classification for events that are in progress, may occur or have occurred that could lead to a release of radioactive material(s) but that the release is not expected to require a response by an offsite response organization to protect persons offsite.

(e) "Authorized nuclear pharmacist". Defined in Rule 0400-20-07-.05.

(f) "Authorized user". Defined in Rule 0400-20-07-.05.

(g) "Barrier" means attenuating materials used to reduce radiation exposure.

1. "Primary". Barrier sufficient to attenuate the useful beam to the required degree at a distance no greater than 8 centimeters beyond the barrier.

2. "Secondary". Barrier sufficient to attenuate scattered and leakage radiation to the required degree at a distance no greater than 8 centimeters beyond the barrier. [1]

(h) "Calibration" means the determination of:

1. The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

2. The strength of a source of radiation relative to a standard.

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[1] It is reasonable to assume that individuals will not occupy the area within 8 centimeters of the barrier continuously.

(i) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract or private carrier, or by civil aircraft.

(j) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the U.S. Nuclear Regulatory Commission (U.S. NRC).

(k) "Certificate of Compliance" (CoC) means the certificate issued by the U.S. NRC under 10 CFR 71 subpart D which approves the design of a package for the transportation of radioactive material.

(l) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(m) "Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to the regulations in this rule division, 0400-20, that has a reasonable nexus to radiological health and safety.

~~(m)~~(n) "Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

~~(n)~~(o) "Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a Federal facility or a medical facility.

(p) "Construction" means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this rule division, 0400-20, that are related to radiological safety or security. The term "construction" does not include:

1. Changes for temporary use of the land for public recreational purposes;

2. Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

3. Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

4. Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials.

5. Excavation;

6. Erection of support buildings (e.g. construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

7. Building of service facilities (e.g. paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

8. Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

9. Taking any other action that has no reasonable nexus to radiological health and safety.

~~(o)~~(q) "Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.

~~(p)~~(r) "Conveyance" means:

1. For transport by public highway or rail: any transport vehicle or large freight container;

2. For transport by water: any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

3. For transport by aircraft: any aircraft.

~~(q)~~(s) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

~~(r)~~(t) "Criticality safety index" (CSI) means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in paragraphs (10) and (11) of Rule 0400-20-10-.30 and 10 CFR 71.59.

~~(s)~~(u) "Curie". Defined in Rule 0400-20-05-.34.

~~(t)~~(v) "Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles and is commonly used for production of short half-life radionuclides for medical or veterinary use.

~~(u)~~(w) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

1. Release of the property for unrestricted use and termination of the license; or

2. Release of the property under restricted conditions and the termination of the license.

~~(v)~~(x) "Deuterium" means, for the purposes of subparagraph (5)(b) and paragraph (10) of Rule 0400-20-10-.30, deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

~~(w)~~(y) "Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

~~(x)~~(z) "Disposal facility" means a land disposal site that is used for the isolation of radioactive waste from the biosphere.

~~(y)~~(aa) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey and statistical techniques.

~~(z)~~(bb) Reserved.

~~(aa)~~(cc) "Dose". Defined in Rule 0400-20-05-.32.

~~(bb)~~(dd) "DOT" and "U.S. DOT" means the United States Department of Transportation. U.S. DOT regulations are found in Code of Federal Regulations Title 49 Transportation.

~~(cc)~~(ee) "Emergency procedures" means the written pre-planned steps to be taken in the event of actual or suspected exposure of individuals to excessive radiation. This procedure should include the names and telephone numbers of individuals to be contacted as well as directives for processing the film badge or other personnel-monitoring device.

~~(dd)~~(ff) "Exclusive use" (or "sole use" or "full load") means sole use by a single consignor of a conveyance for which all initial, intermediate and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier shall ensure that personnel having radiological training and resources appropriate for safe handling of the consignment perform any loading or unloading. The consignor shall issue specific written instructions for maintenance of exclusive use shipment controls and include them with the shipping paper information provided to the carrier by the consignor.

~~(ee)~~(gg) "Exposure"[2] means a measure of the ionization produced in air by X or gamma radiation. It is the sum of the electrical charges on all of the ions of one sign produced in air, when all electrons liberated by photons in a volume element of air are completely stopped in air, divided by the mass of the air in the volume element. The special unit of exposure is the roentgen.

~~(ff)~~(hh) "Fissile material" means plutonium-238, the radionuclides: plutonium-239, plutonium-241, uranium-233, uranium-235 or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only, are not included in this definition. Certain exclusions from fissile material controls are provided in subparagraph (5)(b) of Rule 0400-20-10-.30.

~~(gg)~~(ii) "Fissile material package". See "Package"

~~(hh)~~(jj) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel processing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

~~(ii)~~(kk) "Generator" means a person whose activities with radioactive material are such that waste is generated that is distinctly separate and/or distinct from materials received.

~~(jj)~~(ll) "Graphite" means, for the purposes of subparagraph (5)(b) and paragraph (10) of Rule 0400-20-10-.30, graphite with a boron equivalent content less than 5 parts per million and density greater than 1.5 grams per cubic centimeter.

(mm) "Indian tribe" means an Indian or Alaska native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U. S.C. 479a.

~~(kk)~~(nn) "Human use" (or "medical use") means the intentional internal or external administration of radiation or radioactive materials to individuals under the supervision of an authorized user.

~~(ll)~~(oo) "Interlock" means a device for precluding access to any area of radiation hazard by automatically eliminating the hazard upon entry by personnel or parts of their body.

~~(mm)~~(pp) "Licensed material" means radioactive, by-product, source, or special nuclear material received, possessed, used, or transferred under a general or specific license issued by the Division pursuant to the regulations in this chapter, or issued by the U.S. NRC or an agreement state pursuant to equivalent regulations.

~~(nn)~~(qq) "Licensing State" means any state with regulations equivalent to the Suggested State Regulations for Control of Radiation relating to, and an effective program for, the regulatory control of NARM.

~~(oo)~~(rr) "Low specific activity (LSA) material" means radioactive material with limited specific activity which is nonfissile or is expected under subparagraph (5)(b) of Rule 0400-20-10-.30, and which satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the

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[2] It is reasonable to assume that individuals will not occupy the area within 8 centimeters of the barrier continuously.

package contents. LSA material must be in one three groups:

1. LSA-I

   (i) Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing only naturally occurring radioactive radionuclides which are not intended to be processed for the use of these radionuclides; or

   (ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

   (iii) Radioactive material for which the A_2 value is unlimited; or

   (iv) Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with Schedule 10-6 in Rule 0400-20-10-.38.

2. LSA-II

   (i) Water with tritium concentration up to 20 Ci/liter (0.8 terrabequerel/liter); or

   (ii) Other material in which the activity is distributed throughout and the average specific activity does not exceed 1 (E-4) A_2/gram for solids and gases or 1 (E-5) A_2/gram for liquids.

3. LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of the U.S. NRC regulations 10 CFR 71.77, in which:

   (i) The radioactive material is distributed throughout a solid or a collection of solid objects or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

   (ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven (7) days, would not exceed 0.1 A_2; and

   (iii) The average specific activity of the solid does not exceed 2 (E-3) A_2/gram.

~~(pp)~~(ss) "Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium, uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten (10) days.

~~(qq)~~(tt) "Major processors" means persons processing or handling radioactive materials exceeding Type X quantities[3] as unsealed sources or material.

~~(rr)~~(uu) "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one (1) year under the heat condition specified in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system or operational controls during transport.

~~(ss)~~(vv) "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not

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[3] Type X quantities are defined in Tables RHS 2–1, RHS 2–2 and RHS 2–3 as contained in Chapter 0400-20-05. For purposes of Rule 0400-20-04-.04, where there is involved a combination of radioactive materials licensed, the method of deriving a Type X quantity is as specified in Rule 0400-20-05-.162(1)(b).

include byproduct, source or special nuclear material.

~~(tt)~~(ww) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

~~(uu)~~(xx) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

~~(vv)~~(yy) "Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as special form radioactive material.

~~(ww)~~(zz) "Operating procedures" means detailed written instructions including, but not limited to, the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks and record keeping requirements.

~~(xx)~~(aaa) "Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

~~(yy)~~(bbb) "Ore refineries" means all non-exempt processors of a radioactive material ore.

~~(zz)~~(ccc) "Package" means the packaging together with its radioactive contents as presented for transport.

1. "Fissile material package" or "Type AF package", "Type BF package", Type B(U)F package" or "Type B(M)F package" means a fissile material packaging together with its fissile material contents.

2. "Type A package" means a Type A packaging together with its radioactive contents. A Type A package is defined and must comply with the U.S. DOT regulations in 49 CFR 173.

3. "Type B package" means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lbf/in^2) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see U.S. DOT regulations in 49 CFR 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 10 CFR 71.19.

~~(aaa)~~(ddd) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of this chapter. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system and auxiliary equipment may be designated as part of the packaging.

~~(bbb)~~(eee) "Particle accelerator" means any device used to impact kinetic energy to electrically charged particles including but not limited to electrons, protons, deuterons, and helium ions. For the purpose of these regulations "accelerator" includes equipment designed for and used only for the production of x-rays of 0.9 MeV or greater and equipment capable of discharging nuclear particles into a medium external to the accelerating device. For purposes of this definition, "accelerator" is an equivalent term.

~~(ccc)~~(fff) "Physician" means an individual licensed by the State to dispense drugs in the practice of medicine.

~~(ddd)~~(ggg) "Qualified individual". Defined in Rule 0400-20-06-.03.

~~(eee)~~(hhh)"Qualified expert" means, for purposes of subparagraph (2)(g) and (m) of Rule 0400-20-09-.21, a person:

1. Who is certified by the American Board of Radiology in Therapeutic Radiological Physics, Radiological Physics, Roentgen-Ray and Gamma-Ray Physics or X-Ray and Radium Physics; or

2. Who has the following [4] minimum training and experience:

   (i) A Master's or Doctor's degree in physics, biophysics, radiological physics or health physics;

   (ii) One year of full-time training in therapeutic radiological physics; and

   (iii) One year of full-time experience in a therapy facility including personal calibration and spot check of at least one teletherapy unit.

~~(fff)~~(iii) "Rad" is defined in subparagraph (1)(b) of Rule 0400-20-05-.33.

~~(ggg)~~(jjj)"Radiation machine" means any device capable of producing radiation except devices that produce radiation through utilization of a radioactive material.

~~(hhh)~~(kkk)"Radioactive material" means any material, solid, liquid or gas, which emits radiation spontaneously.

~~(iii)~~(lll) "Radiological Safety Officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection regulations and has been assigned such responsibility by the licensee or registrant.

~~(jjj)~~(mmm)"Rem" is defined in subparagraph (1)(c) of Rule 0400-20-05-.33.

~~(kkk)~~(nnn)"Research and development" means theoretical analysis, exploration or experimentation; or extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes. Research and development includes the experimental production and testing of models, devices, equipment, materials and processes. Research and development does not include the internal or external administration of radiation or radioactive material to individuals.

~~(lll)~~(ooo)"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Chapter 0400-20-05.

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[4] Licensees or certified registrants that utilize persons who do not meet these criteria for minimum training and experience may request a variance excepting them from the requirements of using qualified experts. The request should include:

1. The name of the proposed individual,
2. A description of his or her training and experience including information similar to that specified in Rule 0400-20-04-.04,
3. Reports of at least one calibration and spot–check program based on measurements personally made by the proposed individual within the last 10 years, and
4. Written endorsement of the technical qualifications of the proposed individual from personal knowledge by a physicist certified by the American Board of Radiology in one of the specialties listed in Rule 0400-20-04-.04.

The variance request should be addressed to the Division of Radiological Health, at the address given in Rule 0400-20-04-.07.

~~(mmm)~~(ppp)"Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulomb per kilogram of air.

~~(nnn)~~(qqq)"Sealed source" is defined in Rule 0400-20-07-.05.

~~(ooo)~~(rrr)"Site area emergency" means a classification for events that are in progress, may occur or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

~~(ppp)~~(sss)"Source of radiation" means material that emits radiation spontaneously, or apparatus that produces, or may produce when the associated controls are operated, one or more forms of radiation.

~~(qqq)~~(ttt)"Special form radioactive material" means radioactive material that satisfies the following conditions:

1. It either is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

2. The piece or capsule has at least one dimension not less than 5 millimeters (0.197 inch); and

3. It satisfies the requirements specified by the U.S. Nuclear Regulatory Commission 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. NRC requirements of 10 CFR 71.4 in effect on June 30, 1983 (see 10 CFR 71, revised as of January 1, 1983), and constructed before July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with U.S. NRC requirements of 10 CFR 71.4 in effect on March 31, 1996, (see 10 CFR 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation shall meet the specifications of this definition.

~~(rrr)~~(uuu)"Special nuclear material in quantities not sufficient to form a critical mass" means:

1. Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235;

2. Uranium-233 in quantities not exceeding 200 grams;

3. Plutonium in quantities not exceeding 200 grams; or

4. Any combination of them in accordance with the following formula. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all kinds of special nuclear material in combination shall not exceed 1 (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

~~(sss)~~(vvv)"Specific activity" means the radioactivity of a radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

~~(ttt)~~(www)"Spent nuclear fuel or Spent fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least 1 year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

~~(uuu)~~(xxx)"SRPAR" means State Regulations for Protection Against Radiation.

~~(vvv)~~(yyy)"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

~~(www)~~(zzz)"Surface contaminated object" (SCO) means a solid object that is not itself classed as radioactive material but that has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

1. SCO-I: A solid object on which:

   (i) The removable (non-fixed) contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 E-4 microcurie (4 becquerels) per square centimeter (cm^2) for beta and gamma and low toxicity alpha emitters or 1 E-5 microcuries (0.4 becquerel) per cm^2 for all other alpha emitters;

   (ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 microcurie (4 E+4 becquerels) per square centimeter (cm^2) for beta and gamma and low toxicity alpha emitters or 0.1 microcurie (4 E+3 becquerels) per cm^2 for all other alpha emitters; and

   (iii) The removable (nonfixed) contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 microcurie (4 E+4 becquerels) per square centimeter (cm^2) beta and gamma and low toxicity alpha emitters or 0.1 microcurie (4 E+3 becquerels) per cm^2 for all other alpha emitters.

2. SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

   (i) The removable contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 1 E-2 microcurie (400 becquerels) per square centimeter (cm^2) for beta and gamma and low toxicity alpha emitters or 1 E-3 microcurie (40 becquerels) per cm^2 for all other alpha emitters;

   (ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 20 microcuries (8 E+5 becquerels) per square centimeter (cm^2) for beta and gamma and low toxicity alpha emitters or 2 microcuries (8 E+4 becquerels) per cm^2 for all other alpha emitters; and

   (iii) The removable (nonfixed) contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 20 microcurie (8 E+5 becquerels) per square centimeter (cm^2) for beta and gamma and low toxicity alpha emitters or 2 microcurie (8 E+4 becquerels) per cm^2 for all other alpha emitters.

~~(xxx)~~(aaaa)"Therapeutic-type protective tube housing" means:

1. For x-ray therapy apparatus not capable of operating at 500 kVp or above, the following definition applies. An x-ray tube housing so constructed that the leakage radiation at a distance of 1-meter from the target does not exceed 1 roentgen in an hour when the tube is operated at its maximum rated continuous current for the maximum rated tube potential.

2. For x-ray therapy apparatus capable of operating at 500 kVp or above, the following

definition applies. An x-ray tube housing so constructed that the leakage radiation at a distance of 1-meter from the target does not exceed 0.1 percent of the useful beam exposure rate at 1-meter from the target, for any of its operating conditions.

3. In either case, small areas of reduced protection are acceptable providing the average radiation exposure over any area of 100 square centimeters at 1-meter distance from the target does not exceed the values given above. However, no linear dimension of the area used to obtain the average shall exceed 20 centimeters.

4. See part (1)(a)15 of Rule 0400-20-06-.05 for leakage requirements for contact therapy apparatus.

~~(yyy)~~(bbbb)"These regulations" means "State Regulations for Protection Against Radiation."

~~(zzz)~~(cccc)"Transport index" (TI) means the dimensionless number (rounded up to the next tenth) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number determined by the maximum radiation level in millirem per hour at 1-meter (3.3 feet) from the external surface of the package (equivalent to multiplying the maximum radiation level in millisievert(s) per hour at 1-meter (3.3 feet) by 100). The transport index is determined as follows:

1. For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1-meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1-meter (3.3 ft)); or

2. For fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour at 1-meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1-meter (3.3 ft)), or, for criticality control purposes, the number obtained as described in 10 CFR 71.59, whichever is larger.

(dddd) "Tribal official" means the highest ranking individual that represents tribal leadership, such as the chief, president, or tribal council leadership.

~~(aaaa)~~(eeee)Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Table A-1, Schedule 10-6, Rule 0400-20-10-.37, or may be determined by procedures described in Schedule 10-6, Rule 0400-20-10-.37.

~~(bbbb)~~(ffff)"Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

~~(cccc)~~(gggg)"Unirradiated uranium" means uranium containing not more than 2E+3 Bq of plutonium per gram of uranium-235, not more than 9E+6 Bq of fission products per gram of uranium-235, and not more than 5E-3 g of uranium-236 per gram of uranium-235.

~~(dddd)~~(hhhh)"Units of radioactivity". Defined in Rule 0400-20-05-.34.

~~(eeee)~~(iiii)"Unrefined and unprocessed ore" means ore in its natural form before any processing, such as grinding, roasting, beneficiating or refining.

~~(ffff)~~(jjjj) "Uranium - natural, depleted, enriched" means:

1. Natural uranium: uranium with the naturally occurring distribution of uranium isotopes (about 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

2. Depleted uranium: uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

3. Enriched uranium: uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

~~(gggg)~~(kkkk)"Useful beam" (or "primary beam") means that part of the radiation that passes through a window, aperture, cone or other collimating device.

~~(hhhh)~~(llll)"Waste" means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal at a land disposal facility. For the purposes of this definition, low-level waste is radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or byproduct material as defined in Rule 0400-20-05-.32.

~~(iiii)~~(mmmm)"Waste handler" means a person who holds radioactive wastes for disposal and/or who actually disposes of radioactive wastes for other persons.

~~(jjjj)~~(nnnn)"Waste processor" means a waste handler who performs a physical and/or chemical activity on a material containing or contaminated with radioactive material.

~~(kkkk)~~(oooo)"Worker" means an individual engaging in work under a license or registration issued by the Division and controlled by a licensee or registrant, but does not include the licensee or registrant.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-20-04-.11 Posting Notices to Workers is amended by deleting it in its entirety and substituting instead the following:

(3) Form RHS 8–3 (Notice to Employees).

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF RADIOLOGICAL HEALTH

NOTICE TO EMPLOYEES

In "STATE REGULATIONS FOR PROTECTION AGAINST RADIATION", The Tennessee Department of Environment and Conservation has established standards for your protection against radiation hazards and certain provisions for the option of workers engaged in work under licenses or registrations issued by the Department.

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to–

1. Apply these regulations to work under the license or registration. Licenses and Certified Registrations contain special conditions which shall be considered in addition to these regulations.
2. Post or otherwise make available to you a copy of the regulations, licenses, registrations, and operating procedures which apply to work in which you are engaged, and explain their provisions to you.
3. Post any written notice from the Department that the regulations have been violated and response to such notice.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the regulations, and the operating procedures which apply to the work in which you are engaged. You should observe their provisions for your own protection

employer give you a written report if you receive an exposure in excess of any applicable limit as set forth in the regulations or in the license. The basic limits for exposure to employees are set forth in Rules 0400-20-05-.50, 0400-20-05-.53 and 0400-20-05-.55 of the regulations. These rules specify limits on exposure to radiation and exposure to concentrations of radioactive material in air and water.

2. If you work where personnel monitoring is required and if you request information on your radiation exposures;

   a. your employer must advise you annually of your exposure to radiation; and

   b. your employer must give you a written report, following termination of your employment, of your radiation exposures.

INSPECTIONS

All licensed or registered activities are subject to

and protection of your co–workers.

AREAS COVERED BY THESE REGULATIONS

1. Limits on exposure to radiation and radioactive material in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Personnel monitoring, surveys and equipment;
4. Caution signs, labels and safety interlock equipment;
5. Exposure records and reports;
6. Option for workers regarding the Department's inspection; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The Department's regulations require that your inspection by representatives of the Department. In addition, any worker or representative of workers who believes that there is a violation of the regulations or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Tennessee Department of Environment and Conservation, Division of Radiological Health, ~~L&C Annex, 3rd Floor, 401 Church Street~~ William R. Snodgrass, Tennessee Tower, 15th Floor, 312 Rosa Parks Avenue, Nashville, Tennessee 37243~~–1532~~. The request must set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, Department inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition which he believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice must be posted in a sufficient number of places in every establishment where employees are employed in activities registered or licensed pursuant to Chapter 0400-20-10 to permit employees working in or frequenting any portion of a restricted area to observe a copy on the way to or from their place of employment.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Chapter 0400-20-05
Standards for Protection Against Radiation

Amendments

Rule 0400-20-05-.144 Reports of Planned Special Exposures is amended by deleting it in its entirety and substituting instead the following:

0400-20-05-.144 Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Division of Radiological Health, ~~L&C Annex, 3rd Floor, 401 Church Street, Nashville, TN 37243-1532~~ at the address given in Rule 0400-20-04-.07, within 30 days following any planned special exposure. The report shall inform the Division that a planned special exposure occurred and provide the information required by Rule 0400-20-05-.134.

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

Chapter 0400-20-08
Radiation Safety Requirements for Industrial Radiography

Amendments

Subparagraph (a) of paragraph (10) of Rule 0400-20-08-.04 Equipment Control is amended by deleting it in its entirety and substituting instead the following:

(a) Each radiographic exposure device and all associated equipment shall meet the requirements specified in American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981). This publication may be purchased from the American National Standards Institute, Inc., ~~1430 Broadway, New York, NY 10018 (ANSI N432)~~ 25 West 43rd Street, New York, New York 10036; Telephone: (212) 642-4900. An applicant or licensee may submit engineering analyses to demonstrate the applicability of previously performed testing on similar

individual radiography equipment components. Upon review, the Division may find this an acceptable alternative to actual testing of the component under the above referenced standard.

Authority: T.C.A. §§68-202-101 et seq., 68-202-201 et seq. and 4-5-201 et seq.

Paragraph (5) of Rule 0400-20-08-.05 Personal Radiation Safety Requirements for Radiographers and Radiographer's Assistants is amended by adding a new subparagraph as subparagraph (b) to read as follows:

(b) The Department will consider alternatives when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

Authority: T.C.A. §§68-202-101 et seq., 68-202-201 et seq. and 4-5-201 et seq.

Chapter 0400-20-10
Licensing and Registration

Amendments

Paragraph (3) of Rule 0400-20-10-.16 Specific Terms and Conditions of Licenses is amended by deleting it in its entirety and substituting instead the following:

(3) Each person licensed by the Division pursuant to this Chapter shall confine ~~has~~ his or her use and possession of the material licensed to the locations and purposes authorized in the license.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Part 2 of subparagraph (a) of paragraph (7) of Rule 0400-20-10-.16 Specific Terms and Conditions of Licenses is amended by deleting it in its entirety and substituting instead the following:

2. By or against an entity (as that term is defined in 11 U.S.C. 101~~(14)~~(15)) controlling the licensee or listing the license or licensee as property of the estate; or

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Paragraph (1) of Rule 0400-20-10-.24 Registration is amended by deleting it in its entirety and substituting instead the following:

(1) The owner or person having possession of any radiation machine or accelerator, except those specifically exempted in Rule 0400-20-10-.07, shall register such sources within 10 days after acquisition of such machine. The owner or possessor of any accelerator shall substitute an application for certified registration required in Chapter 0400-20-09. The application for certified registration must be received by the Department within 10 days after acquisition of the accelerator; however, an accelerator may not be energized until registered pursuant to Chapter 0400-20-09. In addition, every person who provides inspections as provided for in paragraph (4) of Rule 0400-20-10-.27 and every person who assembles, installs, or services radiation machines shall register with the Division of Radiological Health, Tennessee Department of Environment and Conservation. Registration under this rule shall be on Department Form RHS 8-4, Form RHS 8-4a or Form RHS 8-4b, as appropriate, as furnished by the Department and may be obtained from the Division of Radiological Health, ~~L&C Annex, 3rd Floor, 401 Church Street, Nashville, Tennessee 37243-1532~~ at the address given in Rule 0400-20-04-.07. A registration fee in accordance with the Classification and Fee Schedule in paragraph (3) of this rule shall be due upon receipt of an invoice from the Division of Radiological Health following the submittal of the completed registration form. The check for the fee shall be made payable to "Treasurer, State of Tennessee."

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Part 4 of subparagraph (d) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting it in its entirety and substituting instead the following:

4. The registrant submits to the Division, at ~~L&C Annex, 3rd Floor, 401 Church Street, Nashville, TN 37243-1532~~ the address given in Rule 0400-20-04-.07:

(i) Copies of the appropriate State evaluation forms within 60 days after the inspection.

(ii) Copies of applicable service reports to document correction of any deficiencies noted within 60 days after the inspection.

(iii) A signed "X-Ray Inspection Notification and Certification of Compliance" form within 60 days of the inspection.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Paragraph (21) of Rule 0400-20-10-.30 Packaging and Transportation of Radioactive Material is amended by deleting it in its entirety and substituting instead the following:

(21) Advance notification of shipment of ~~irradiated reactor fuel and~~ nuclear waste.

(a) 1. As specified in subparagraphs (b), (c) and (d) of this paragraph, each licensee shall provide advance notification to the governor of a state, or the governor's designee, and to the Director, Division of Radiological Health, of the shipment of licensed material, within ~~through~~ or across the boundary of the State, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

2. As specified in subparagraphs (b), (c), and (d) of this paragraph, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in subpart (c)3(iii) of this paragraph, or the official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(b) ~~Advance notification is required under this paragraph for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of 10 CFR 73.37(f).~~ Advance notification is also required under this paragraph for shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

1. The licensed material is required by 10 CFR 71 to be in Type B packaging for transportation;

2. The licensed material is being transported to or across the State boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

3. The quantity of licensed material in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in Schedule 10-6 in Rule 0400-20-10-.38, Table A-1 for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in Schedule 10-6 in Rule 0400-20-10-.38, Table A-1 for normal form radioactive material; or

(iii) 1000 TBq (27,000 Ci).

(c) Procedures for submitting advance notification.

1. The notification shall be made in writing to the office of each appropriate governor or governor's designee, the office of each appropriate Tribal official or Tribal official's designee, and to the Director, Division of Radiological Health.

2. A notification delivered by mail shall be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

3. A notification delivered by any other means than mail shall reach the office of the governor, or of the governor's designee, or the Tribal official or Tribal official's designee and of the Director, Division of Radiological Health, at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list of governor's designees and Tribal official's designees of participating Tribes will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees and Tribal officials' designees of participating Tribes is available on request from the Director, ~~Office of State Programs~~ Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(iv) The licensee shall retain a copy of the notification as a record for 3 years.

(d) Information to be furnished in advance notification of shipment. Each advance notification of shipment ~~of irradiated reactor fuel or~~ nuclear waste shall contain the following information:

1. The name, address and telephone number of the shipper, carrier and receiver of the ~~irradiated reactor fuel or~~ nuclear waste shipment;

2. A description of the ~~irradiated reactor fuel or~~ nuclear waste contained in the shipment, as specified in the regulations of U.S. DOT in 49 CFR 172.202 and 172.203(d);

3. The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

4. The 7-day period during which arrival of the shipment at the State~~'s~~ boundaries or Tribal reservation boundaries is estimated to occur;

5. The destination of the shipment and the 7-day period during which arrival of the shipment is estimated to occur; and

6. A point of contact, with a telephone number, for current shipment information.

(e) Revision notice.

A licensee who finds that schedule information previously furnished to the governor, or governor's designee, or a Tribal official or Tribal official's designee, and to the Director, Division of Radiological Health, in accordance with this paragraph, will not be met, shall telephone a responsible individual in the office of the governor of the State, or of the governor's designee, or a Tribal official or Tribal official's designee, and of the Division of Radiological Health and inform those individuals of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 3 years.

(f) Cancellation notice.

1. Each licensee who cancels ~~an irradiated reactor fuel or~~ a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State, or to the governor's designee, previously notified, each Tribal official or to

the Tribal official's designee previously notified, and to the Director, Division of Radiological Health.

2. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for 3 years.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Schedule 10-6 of Rule 0400-20-10-.38 Appendix-Schedules is amended by deleting it in its entirety and substituting instead the following:

SCHEDULE 10-6: DETERMINATION OF A_1 AND A_2.

(1) Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these regulations, are given in Table A-1. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) ~~figure~~ value. The terabecquerel values are the regulatory standard.. The curie values are ~~expressed to three significant figures to assure that the difference in the TBq and Ci quantities is 0.1 percent or less~~ for information only and are not intended to be the regulatory standard. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(2) (a) For individual radionuclides whose identities are known but that are not listed in Table A-1, the A_1 and A_2 values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior Division approval of the A_1 and A_2 values for radionuclides not listed in Table A-1, before shipping the material.

(b) For individual radionuclides whose identities are known, but which are not listed in Table A-2, the exempt material activity concentration and exempt consignment activity values contained in Table A-3 may be used. Otherwise, the licensee shall obtain prior Division approval of the exempt material activity concentration and exempt consignment activity values for radionuclides not listed in Table A-2, before shipping the material.

(c) The licensee shall submit requests for prior approval, described under subparagraphs (a) and (b) of this schedule, to the Division, in accordance with Rule 0400-20-04-.07.

(3) In the calculations of A_1 and A_2 for a radionuclide not in Table A-1, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half–life either longer than 10 days or longer than that of the parent nuclide, shall be considered as a single radionuclide. The activity to be taken into account, and the A_1 or A_2 value to be applied, shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half–life either longer than 10 days or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

(4) For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply:

(a) For special form radioactive material, the maximum quantity transported in a Type A package:

$$\sum_{I} \frac{B(i)}{A_1(i)} \text{ less than or equal to } 1$$

where B(i) is the activity of radionuclide I, and $A_1(i)$ is the A_1 value for radionuclide I.

(b) For normal form radioactive material, the maximum quantity transported in a Type A package:

$$\sum_{I} \frac{B(i)}{A_2(i)} \text{ less than or equal to } 1$$

where B(i) is the activity of radionuclide I, and $A_2(i)$ is the A_2 value for radionuclide I.

(c) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:

$$A_1 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_1(i)}}$$

Where f(i) is the fraction of activity of nuclide I in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide I.

(d) An A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_2(i)}}$$

Where f(i) is the fraction of activity of nuclide I in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide I.

(e) The exempt activity concentration for mixtures of nuclides may be determined as follows:

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

(f) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A(i)}}$$

where f(i) is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

(5) When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped. The lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph (4) of this schedule. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

Table A-1—A_1 and A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225 (a)	Actinium (89)	$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.1X10^{3}$	$5.8X10^{4}$
Ac-227 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-5}$	$2.4X10^{-3}$	2.7	$7.2X10^{1}$
Ac-228		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.4X10^{4}$	$2.2X10^{6}$

Ag-105	Silver (47)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Ag-108m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.7X10^{-1}$	$2.6X10^{1}$
Ag-110m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.8X10^{2}$	$4.7X10^{3}$
Ag-111		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Al-26	Aluminum (13)	$1.0X10^{-1}$	2.7	$1.0X10^{-1}$	2.7	$7.0X10^{-4}$	$1.9X10^{-2}$
Am-241	Americium (95)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.3X10^{-1}$	3.4
Am-242m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.6X10^{-1}$	$1.0X10^{1}$
Am-243 (a)		5.0	$1.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.4X10^{-3}$	$2.0X10^{-1}$
Ar-37	Argon (18)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.7X10^{3}$	$9.9X10^{4}$
Ar-39		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	1.3	$3.4X10^{1}$
Ar-41		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.5X10^{6}$	$4.2X10^{7}$
As-72	Arsenic (33)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$6.2X10^{4}$	$1.7X10^{6}$
As-73		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.2X10^{2}$	$2.2X10^{4}$
As-74		1.0	$2.7X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$3.7X10^{3}$	$9.9X10^{4}$
As-76		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.8X10^{4}$	$1.6X10^{6}$
As-77		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.9X10^{4}$	$1.0X10^{6}$
At-211 (a)	Astatine (85)	$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.6X10^{4}$	$2.1X10^{6}$
Au-193	Gold (79)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$3.4X10^{4}$	$9.2X10^{5}$
Au-194		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{4}$	$4.1X10^{5}$
Au-195		$1.0X10^{1}$	$2.7X10^{2}$	6.0	$1.6X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Au-198		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.0X10^{3}$	$2.4X10^{5}$
Au-199		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{3}$	$2.1X10^{5}$
Ba-131 (a)	Barium (56)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Ba-133		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	9.4	$2.6X10^{2}$
Ba-133m		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{4}$	$6.1X10^{5}$
Ba-140 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{-1}$	8.1	$2.7X10^{3}$	$7.3X10^{4}$
Be-7	Beryllium (4)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.3X10^{4}$	$3.5X10^{5}$
Be-10		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$8.3X10^{-4}$	$2.2X10^{-2}$
Bi-205	Bismuth (83)	$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{3}$	$4.2X10^{4}$
Bi-206		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.8X10^{3}$	$1.0X10^{5}$
Bi-207		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	1.9	$5.2X10^{1}$
Bi-210		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$
Bi-210m (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.1X10^{-5}$	$5.7X10^{-4}$
Bi-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{5}$	$1.5X10^{7}$
Bk-247	Berkelium (97)	8.0	$2.2X10^{2}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$3.8X10^{-2}$	1.0
Bk-249 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{-1}$	8.1	$6.1X10^{1}$	$1.6X10^{3}$
Br-76	Bromine (35)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$9.4X10^{4}$	$2.5X10^{6}$
Br-77		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$2.6X10^{4}$	$7.1X10^{5}$
Br-82		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{4}$	$1.1X10^{6}$
C-11	Carbon (6)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.1X10^{7}$	$8.4X10^{8}$
C-14		$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{-1}$	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	$3.1X10^{-3}$	$8.5X10^{-2}$
Ca-45		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$
Ca-47 (a)		3.0	$8.1X10^{1}$	$3.0X10^{-1}$	8.1	$2.3X10^{4}$	$6.1X10^{5}$
Cd-109	Cadmium (48)	$3.0X10^{1}$	$8.1X10^{2}$	2.0	$5.4X10^{1}$	$9.6X10^{1}$	$2.6X10^{3}$

Cd-113m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	8.3	$2.2X10^{2}$
Cd-115 (a)		3.0	$8.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.9X10^{4}$	$5.1X10^{5}$
Cd-115m		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.4X10^{2}$	$2.5X10^{4}$
Ce-139	Cerium (58)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$2.5X10^{2}$	$6.8X10^{3}$
Ce-141		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.8X10^{4}$
Ce-143		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.6X10^{5}$
Ce-144 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.2X10^{3}$
Cf-248	Californium (98)	$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$5.8X10^{1}$	$1.6X10^{3}$
Cf-249		3.0	$8.1X10^{1}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$1.5X10^{-1}$	4.1
Cf-250		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	4.0	$1.1X10^{2}$
Cf-251		7.0	$1.9X10^{2}$	$7.0X10^{-4}$	$1.9X10^{-2}$	$5.9X10^{-2}$	1.6
Cf-252 (h)		$5.0X10^{-2}$	1.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.4X10^{2}$
Cf-253 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-2}$	1.1	$1.1X10^{3}$	$2.9X10^{4}$
Cf-254		$1.0X10^{-3}$	$2.7X10^{-2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.1X10^{2}$	$8.5X10^{3}$
Cl-36	Chlorine (17)	$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{-3}$	$3.3X10^{-2}$
Cl-38		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$4.9X10^{6}$	$1.3X10^{8}$
Cm-240	Curium (96)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$7.5X10^{2}$	$2.0X10^{4}$
Cm-241		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$6.1X10^{2}$	$1.7X10^{4}$
Cm-242		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$1.2X10^{2}$	$3.3X10^{3}$
Cm-243		9.0	$2.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.9X10^{-3}$	$5.2X10^{1}$
Cm-244		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	3.0	$8.1X10^{1}$
Cm-245		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$6.4X10^{-3}$	$1.7X10^{-1}$
Cm-246		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$1.1X10^{-2}$	$3.1X10^{-1}$
Cm-247 (a)		3.0	$8.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.4X10^{-6}$	$9.3X10^{-5}$
Cm-248		$2.0X10^{-2}$	$5.4X10^{-1}$	$3.0X10^{-4}$	$8.1X10^{-3}$	$1.6X10^{-4}$	$4.2X10^{-3}$
Co-55	Cobalt (27)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Co-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{3}$	$3.0X10^{4}$
Co-57		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$3.1X10^{2}$	$8.4X10^{3}$
Co-58		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Co-58m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.2X10^{5}$	$5.9X10^{6}$
Co-60		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.2X10^{1}$	$1.1X10^{3}$
Cr-51	Chromium (24)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.4X10^{3}$	$9.2X10^{4}$
Cs-129	Cesium (55)	4.0	$1.1X10^{2}$	4.0	$1.1X10^{2}$	$2.8X10^{4}$	$7.6X10^{5}$
Cs-131		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.8X10^{3}$	$1.0X10^{5}$
Cs-132		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.7X10^{3}$	$1.5X10^{5}$
Cs-134		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.8X10^{1}$	$1.3X10^{3}$
Cs-134m		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.0X10^{6}$
Cs-135		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$4.3X10^{-5}$	$1.2X10^{-3}$
Cs-136		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.7X10^{3}$	$7.3X10^{4}$
Cs-137 (a)		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	3.2	$8.7X10^{1}$
Cu-64	Copper (29)	6.0	$1.6X10^{2}$	1.0	$2.7X10^{1}$	$1.4X10^{5}$	$3.9X10^{6}$
Cu-67		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.8X10^{4}$	$7.6X10^{5}$
Dy-159	Dysprosium (66)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$2.1X10^{2}$	$5.7X10^{3}$
Dy-165		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Dy-166 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$3.0X10^{-1}$	8.1	$8.6X10^{3}$	$2.3X10^{5}$

Er-169	Erbium (68)	$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$3.1X10^{3}$	$8.3X10^{4}$
Er-171		$8.0X10^{-1}$	$2.2X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.0X10^{4}$	$2.4X10^{6}$
Eu-147	Europium (63)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.4X10^{3}$	$3.7X10^{4}$
Eu-148		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.0X10^{2}$	$1.6X10^{4}$
Eu-149		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$3.5X10^{2}$	$9.4X10^{3}$
Eu-150 (short lived)		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-150 (long lived)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-152		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	6.5	$1.8X10^{2}$
Eu-152m		$8.0X10^{-1}$	$2.2X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$8.2X10^{4}$	$2.2X10^{6}$
Eu-154		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	9.8	$2.6X10^{2}$
Eu-155		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$1.8X10^{1}$	$4.9X10^{2}$
Eu-156		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{3}$	$5.5X10^{4}$
F-18	Fluorine (9)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.5X10^{6}$	$9.5X10^{7}$
Fe-52 (a)	Iron (26)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.7X10^{5}$	$7.3X10^{6}$
Fe-55		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.8X10^{1}$	$2.4X10^{3}$
Fe-59		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$1.8X10^{3}$	$5.0X10^{4}$
Fe-60 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-1}$	5.4	$7.4X10^{-4}$	$2.0X10^{-2}$
Ga-67	Gallium (31)	7.0	$1.9X10^{2}$	3.0	$8.1X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Ga-68		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.5X10^{6}$	$4.1X10^{7}$
Ga-72		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Gd-146 (a)	Gadolinium (64)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Gd-148		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	1.2	$3.2X10^{1}$
Gd-153		$1.0X10^{1}$	$2.7X10^{2}$	9.0	$2.4X10^{2}$	$1.3X10^{2}$	$3.5X10^{3}$
Gd-159		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.9X10^{4}$	$1.1X10^{6}$
Ge-68 (a)	Germanium (32)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.6X10^{2}$	$7.1X10^{3}$
Ge-71		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.8X10^{3}$	$1.6X10^{5}$
Ge-77		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Hf-172 (a)	Hafnium (72)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Hf-175		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$3.9X10^{2}$	$1.1X10^{4}$
Hf-181		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.3X10^{2}$	$1.7X10^{4}$
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-6}$	$2.2X10^{-4}$
Hg-194 (a)	Mercury (80)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.3X10^{-1}$	3.5
Hg-195m (a)		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Hg-197		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.2X10^{3}$	$2.5X10^{5}$
Hg-197m		$1.0X10^{1}$	$2.7X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.5X10^{4}$	$6.7X10^{5}$
Hg-203		5.0	$1.4X10^{2}$	1.0	$2.7X10^{1}$	$5.1X10^{2}$	$1.4X10^{4}$
Ho-166	Holmium (67)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
Ho-166m		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.6X10^{-2}$	1.8
I-123	Iodine (53)	6.0	$1.6X10^{2}$	3.0	$8.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$
I-124		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$9.3X10^{3}$	$2.5X10^{5}$
I-125		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$6.4X10^{2}$	$1.7X10^{4}$
I-126		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{3}$	$8.0X10^{4}$
I-129		Unlimited	Unlimited	Unlimited	Unlimited	$6.5X10^{-6}$	$1.8X10^{-4}$
I-131		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$

I-132		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.8X10^{5}$	$1.0X10^{7}$
I-133		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{4}$	$1.1X10^{6}$
I-134		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$9.9X10^{5}$	$2.7X10^{7}$
I-135 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.3X10^{5}$	$3.5X10^{6}$
In-111	Indium (49)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.5X10^{4}$	$4.2X10^{5}$
In-113m		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$6.2X10^{5}$	$1.7X10^{7}$
In-114m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.6X10^{2}$	$2.3X10^{4}$
In-115m		7.0	$1.9X10^{2}$	1.0	$2.7X10^{1}$	$2.2X10^{5}$	$6.1X10^{6}$
Ir-189 (a)	Iridium (77)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.9X10^{3}$	$5.2X10^{4}$
Ir-190		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.3X10^{3}$	$6.2X10^{4}$
Ir-192 (c)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.4X10^{2}$	$9.2X10^{3}$
Ir-194		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.1X10^{4}$	$8.4X10^{5}$
K-40	Potassium (19)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.4X10^{-7}$	$6.4X10^{-6}$
K-42		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.2X10^{5}$	$6.0X10^{6}$
K-43		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Kr-81	Krypton (36)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$7.8X10^{-4}$	$2.1X10^{-2}$
Kr-85		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.5X10^{1}$	$3.9X10^{2}$
Kr-85m		8.0	$2.2X10^{2}$	3.0	$8.1X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Kr-87		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.0X10^{6}$	$2.8X10^{7}$
La-137	Lanthanum (57)	$3.0X10^{1}$	$8.1X10^{2}$	6.0	$1.6X10^{2}$	$1.6X10^{-3}$	$4.4X10^{-2}$
La-140		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.1X10^{4}$	$5.6X10^{5}$
Lu-172	Lutetium (71)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{3}$	$1.1X10^{5}$
Lu-173		8.0	$2.2X10^{2}$	8.0	$2.2X10^{2}$	$5.6X10^{1}$	$1.5X10^{3}$
Lu-174		9.0	$2.4X10^{2}$	9.0	$2.4X10^{2}$	$2.3X10^{1}$	$6.2X10^{2}$
Lu-174m		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$2.0X10^{2}$	$5.3X10^{3}$
Lu-177		$3.0X10^{1}$	$8.1X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.1X10^{3}$	$1.1X10^{5}$
Mg-28 (a)	Magnesium (12)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{5}$	$5.4X10^{6}$
Mn-52	Manganese (25)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.6X10^{4}$	$4.4X10^{5}$
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	$6.8X10^{-5}$	$1.8X10^{-3}$
Mn-54		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{2}$	$7.7X10^{3}$
Mn-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.0X10^{5}$	$2.2X10^{7}$
Mo-93	Molybdenum (42)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.1X10^{-2}$	1.1
Mo-99 (a) (i)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{4}$	$4.8X10^{5}$
N-13	Nitrogen (7)	$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{7}$	$1.5X10^{9}$
Na-22	Sodium (11)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.3X10^{3}$
Na-24		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.2X10^{5}$	$8.7X10^{6}$
Nb-93m	Niobium (41)	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	8.8	$2.4X10^{2}$
Nb-94		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.9X10^{-3}$	$1.9X10^{-1}$
Nb-95		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{3}$	$3.9X10^{4}$
Nb-97		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.9X10^{5}$	$2.7X10^{7}$
Nd-147	Neodymium (60)	6.0	$1.6X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Nd-149		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{5}$	$1.2X10^{7}$
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	$3.0X10^{-3}$	$8.0X10^{-2}$
Ni-63		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	2.1	$5.7X10^{1}$
Ni-65		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{5}$	$1.9X10^{7}$

Np-235	Neptunium (93)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.2X10^{1}$	$1.4X10^{3}$
Np-236 (short-lived)		$2.0X10^{1}$	$5.4X10^{2}$	2.0	$5.4X10^{1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-236 (long-lived)		$9.0X10^{0}$	$2.4X10^{2}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	$2.6X10^{-5}$	$7.1X10^{-4}$
Np-239		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$8.6X10^{3}$	$2.3X10^{5}$
Os-185	Osmium (76)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.8X10^{2}$	$7.5X10^{3}$
Os-191		$1.0X10^{1}$	$2.7X10^{2}$	2.0	$5.4X10^{1}$	$1.6X10^{3}$	$4.4X10^{4}$
Os-191m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.6X10^{4}$	$1.3X10^{6}$
Os-193		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{4}$	$5.3X10^{5}$
Os-194 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{1}$	$3.1X10^{2}$
P-32	Phosphorus (15)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{4}$	$2.9X10^{5}$
P-33		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pa-230 (a)	Protactinium (91)	2.0	$5.4X10^{1}$	$7.0X10^{-2}$	1.9	$1.2X10^{3}$	$3.3X10^{4}$
Pa-231		4.0	$1.1X10^{2}$	$4.0X10^{-4}$	$1.1X10^{-2}$	$1.7X10^{-3}$	$4.7X10^{-2}$
Pa-233		5.0	$1.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.7X10^{2}$	$2.1X10^{4}$
Pb-201	Lead (82)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.2X10^{4}$	$1.7X10^{6}$
Pb-202		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.2X10^{-4}$	$3.4X10^{-3}$
Pb-203		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$1.1X10^{4}$	$3.0X10^{5}$
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	$4.5X10^{-6}$	$1.2X10^{-4}$
Pb-210 (a)		1.0	$2.7X10^{1}$	$5.0X10^{-2}$	1.4	2.8	$7.6X10^{1}$
Pb-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{-1}$	5.4	$5.1X10^{4}$	$1.4X10^{6}$
Pd-103 (a)	Palladium (46)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.8X10^{3}$	$7.5X10^{4}$
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	$1.9X10^{-5}$	$5.1X10^{-4}$
Pd-109		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.9X10^{4}$	$2.1X10^{6}$
Pm-143	Promethium (61)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.3X10^{2}$	$3.4X10^{3}$
Pm-144		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.2X10^{1}$	$2.5X10^{3}$
Pm-145		$3.0X10^{1}$	$8.1X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	5.2	$1.4X10^{2}$
Pm-147		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$3.4X10^{1}$	$9.3X10^{2}$
Pm-148m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Pm-149		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Pm-151		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.7X10^{4}$	$7.3X10^{5}$
Po-210	Polonium (84)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.7X10^{2}$	$4.5X10^{3}$
Pr-142	Praseodymium (59)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.3X10^{4}$	$1.2X10^{6}$
Pr-143		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{3}$	$6.7X10^{4}$
Pt-188 (a)	Platinum (78)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$2.5X10^{3}$	$6.8X10^{4}$
Pt-191		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$8.7X10^{3}$	$2.4X10^{5}$
Pt-193		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	1.4	$3.7X10^{1}$
Pt-193m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pt-195m		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.2X10^{3}$	$1.7X10^{5}$
Pt-197		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.2X10^{4}$	$8.7X10^{5}$
Pt-197m		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.7X10^{5}$	$1.0X10^{7}$
Pu-236	Plutonium (94)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.3X10^{2}$
Pu-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.5X10^{2}$	$1.2X10^{4}$
Pu-238		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.3X10^{-1}$	$1.7X10^{1}$

Pu-239		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$2.3X10^{-3}$	$6.2X10^{-2}$
Pu-240		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.4X10^{-3}$	$2.3X10^{-1}$
Pu-241 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-2}$	1.6	3.8	$1.0X10^{2}$
Pu-242		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.5X10^{-4}$	$3.9X10^{-3}$
Pu-244 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.7X10^{-7}$	$1.8X10^{-5}$
Ra-223 (a)	Radium (88)	$4.0X10^{-1}$	$1.1X10^{1}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$1.9X10^{3}$	$5.1X10^{4}$
Ra-224 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$5.9X10^{3}$	$1.6X10^{5}$
Ra-225 (a)		$2.0X10^{-1}$	5.4	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.5X10^{3}$	$3.9X10^{4}$
Ra-226 (a)		$2.0X10^{-1}$	5.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$3.7X10^{-2}$	1.0
Ra-228 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.0X10^{1}$	$2.7X10^{2}$
Rb-81	Rubidium (37)	2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{5}$	$8.4X10^{6}$
Rb-83 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$6.8X10^{2}$	$1.8X10^{4}$
Rb-84		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.8X10^{3}$	$4.7X10^{4}$
Rb-86		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	$3.2X10^{-9}$	$8.6X10^{-8}$
Rb(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$6.7X10^{6}$	$1.8X10^{8}$
Re-184	Rhenium (75)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Re-184m		3.0	$8.1X10^{1}$	1.0	$2.7X10^{1}$	$1.6X10^{2}$	$4.3X10^{3}$
Re-186		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.9X10^{3}$	$1.9X10^{5}$
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	$1.4X10^{-9}$	$3.8X10^{-8}$
Re-188		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.6X10^{4}$	$9.8X10^{5}$
Re-189 (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.8X10^{5}$
Re(nat)		Unlimited	Unlimited	Unlimited	Unlimited	0.0	$2.4X10^{-8}$
Rh-99	Rhodium (45)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$
Rh-101		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Rh-102		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{1}$	$1.2X10^{3}$
Rh-102m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$
Rh-103m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$1.2X10^{6}$	$3.3X10^{7}$
Rh-105		$1.0X10^{1}$	$2.7X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{4}$	$8.4X10^{5}$
Rn-222 (a)	Radon (86)	$3.0X10^{-1}$	8.1	$4.0X10^{-3}$	$1.1X10^{-1}$	$5.7X10^{3}$	$1.5X10^{5}$
Ru-97	Ruthenium (44)	5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.7X10^{4}$	$4.6X10^{5}$
Ru-103 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Ru-105		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{5}$	$6.7X10^{6}$
Ru-106 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.3X10^{3}$
S-35	Sulphur (16)	$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{3}$	$4.3X10^{4}$
Sb-122	Antimony (51)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Sb-124		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.5X10^{2}$	$1.7X10^{4}$
Sb-125		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$3.9X10^{1}$	$1.0X10^{3}$
Sb-126		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Sc-44	Scandium (21)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.7X10^{5}$	$1.8X10^{7}$
Sc-46		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.3X10^{3}$	$3.4X10^{4}$
Sc-47		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.1X10^{4}$	$8.3X10^{5}$
Sc-48		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.5X10^{4}$	$1.5X10^{6}$
Se-75	Selenium (34)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$5.4X10^{2}$	$1.5X10^{4}$
Se-79		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$2.6X10^{-3}$	$7.0X10^{-2}$

Si-31	Silicon (14)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.4X10^{6}$	$3.9X10^{7}$
Si-32		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	3.9	$1.1X10^{2}$
Sm-145	Samarium (62)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.8X10^{1}$	$2.6X10^{3}$
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	$8.5X10^{-1}$	$2.3X10^{-8}$
Sm-151		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.7X10^{-1}$	$2.6X10^{1}$
Sm-153		9.0	$2.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.6X10^{4}$	$4.4X10^{5}$
Sn-113 (a)	Tin (50)	4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$3.7X10^{2}$	$1.0X10^{4}$
Sn-117m		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$
Sn-119m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Sn-121m (a)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	2.0	$5.4X10^{1}$
Sn-123		$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Sn-125		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{3}$	$1.1X10^{5}$
Sn-126 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.8X10^{-2}$
Sr-82 (a)	Strontium (38)	$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.3X10^{3}$	$6.2X10^{4}$
Sr-85		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.8X10^{2}$	$2.4X10^{4}$
Sr-85m		5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.2X10^{6}$	$3.3X10^{7}$
Sr-87m		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$4.8X10^{5}$	$1.3X10^{7}$
Sr-89		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.9X10^{4}$
Sr-90 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	5.1	$1.4X10^{2}$
Sr-91 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Sr-92 (a)		1.0	$2.7X10^{1}$	$3.0X10^{-1}$	8.1	$4.7X10^{5}$	$1.3X10^{7}$
T(H-3)	Tritium (1)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.6X10^{2}$	$9.7X10^{3}$
Ta-178 (long-lived)	Tantalum (73)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$4.2X10^{6}$	$1.1X10^{8}$
Ta-179		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.1X10^{1}$	$1.1X10^{3}$
Ta-182		$9.0X10^{-1}$	$2.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$
Tb-157	Terbium (65)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-158		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-160		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{2}$	$1.1X10^{4}$
Tc-95m (a)	Technetium (43)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.3X10^{2}$	$2.2X10^{4}$
Tc-96		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.2X10^{4}$	$3.2X10^{5}$
Tc-96m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.4X10^{6}$	$3.8X10^{7}$
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	$5.2X10^{-5}$	$1.4X10^{-3}$
Tc-97m		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.6X10^{2}$	$1.5X10^{4}$
Tc-98		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.2X10^{-5}$	$8.7X10^{-4}$
Tc-99		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.3X10^{-4}$	$1.7X10^{-2}$
Tc-99m		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$1.9X10^{5}$	$5.3X10^{6}$
Te-121	Tellurium (52)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.4X10^{3}$	$6.4X10^{4}$
Te-121m		5.0	$1.4X10^{2}$	3.0	$8.1X10^{1}$	$2.6X10^{2}$	$7.0X10^{3}$
Te-123m		8.0	$2.2X10^{2}$	1.0	$2.7X10^{1}$	$3.3X10^{2}$	$8.9X10^{3}$
Te-125m		$2.0X10^{1}$	$5.4X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.7X10^{2}$	$1.8X10^{4}$
Te-127		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.8X10^{4}$	$2.6X10^{6}$
Te-127m (a)		$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
Te-129		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{5}$	$2.1X10^{7}$
Te-129m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Te-131m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{4}$	$8.0X10^{5}$

Te-132 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	~~$3.1X10^{4}$~~ $1.1X10^{4}$	$3.0X10^{5}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-3}$	$1.4X10^{-1}$	$1.1X10^{3}$	$3.1X10^{4}$
Th-228 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.0X10^{1}$	$8.2X10^{2}$
Th-229		5.0	$1.4X10^{2}$	$5.0X10^{-4}$	$1.4X10^{-2}$	$7.9X10^{-3}$	$2.1X10^{-1}$
Th-230		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.6X10^{-4}$	$2.1X10^{-2}$
Th-231		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.0X10^{4}$	$5.3X10^{5}$
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	$4.0X10^{-9}$	$1.1X10^{-7}$
Th-234 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.6X10^{2}$	$2.3X10^{4}$
Th(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-9}$	$2.2X10^{-7}$
Ti-44 (a)	Titanium (22)	$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	6.4	$1.7X10^{2}$
Tl-200	Thallium (81)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Tl-201		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$7.9X10^{3}$	$2.1X10^{5}$
Tl-202		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.0X10^{3}$	$5.3X10^{4}$
Tl-204		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.7X10^{1}$	$4.6X10^{2}$
Tm-167	Thulium (69)	7.0	$1.9X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{3}$	$8.5X10^{4}$
Tm-170		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{2}$	$6.0X10^{3}$
Tm-171		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$
U-230 (fast lung absorption) (a)(d)	Uranium (92)	$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-1}$	2.7	$1.0X10^{3}$	$2.7X10^{4}$
U-230 (medium lung absorption) (a)(e)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.0X10^{3}$	$2.7X10^{4}$
U-230 (slow lung absorption) (a)(f)		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$1.0X10^{3}$	$2.7X10^{4}$
U-232 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-232 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-233 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-234 (fast		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$2.3X10^{-4}$	$6.2X10^{-3}$

lung absorption) (d)							
U-234 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-234 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-235 (all lung absorption types) (a),(d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$8.0X10^{-8}$	$2.2X10^{-6}$
U-236 (fast lung absorption) (d)		Unlimited	Unlimited	Unlimited	Unlimited	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$
U-238 (all lung absorption types) (d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$1.2X10^{-8}$	$3.4X10^{-7}$
U (nat)		Unlimited	Unlimited	Unlimited	Unlimited	$2.6X10^{-8}$	$7.1X10^{-7}$
U (enriched to 20% or less) (g)		Unlimited	Unlimited	Unlimited	Unlimited	See Table A-4	See Table A-4
U (dep)		Unlimited	Unlimited	Unlimited	Unlimited	See Table A-4	(See Table A-3)
V-48	Vanadium (23)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$6.3X10^{3}$	$1.7X10^{5}$
V-49		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{2}$	$8.1X10^{3}$
W-178 (a)	Tungsten (74)	9.0	$2.4X10^{2}$	5.0	$1.4X10^{2}$	$1.3X10^{3}$	$3.4X10^{4}$
W-181		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$2.2X10^{2}$	$6.0X10^{3}$
W-185		$4.0X10^{1}$	$1.1X10^{3}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
W-187		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
W-188 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{-1}$	8.1	$3.7X10^{2}$	$1.0X10^{4}$
Xe-122 (a)	Xenon (54)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.8X10^{4}$	$1.3X10^{6}$
Xe-123		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.4X10^{5}$	$1.2X10^{7}$
Xe-127		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$1.0X10^{3}$	$2.8X10^{4}$
Xe-131m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.1X10^{3}$	$8.4X10^{4}$
Xe-133		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$6.9X10^{3}$	$1.9X10^{5}$
Xe-135		3.0	$8.1X10^{1}$	2.0	$5.4X10^{1}$	$9.5X10^{4}$	$2.6X10^{6}$
Y-87 (a)	Yttrium (39)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.7X10^{4}$	$4.5X10^{5}$
Y-88		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$5.2X10^{2}$	$1.4X10^{4}$
Y-90		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{4}$	$5.4X10^{5}$

Y-91		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.1X10^{2}$	$2.5X10^{4}$
Y-91m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.5X10^{6}$	$4.2X10^{7}$
Y-92		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.6X10^{5}$	$9.6X10^{6}$
Y-93		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.2X10^{5}$	$3.3X10^{6}$
Yb-169	Ytterbium (70)	4.0	$1.1X10^{2}$	1.0	$2.7X10^{1}$	$8.9X10^{2}$	$2.4X10^{4}$
Yb-175		$3.0X10^{1}$	$8.1X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.6X10^{3}$	$1.8X10^{5}$
Zn-65	Zinc (30)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Zn-69		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{6}$	$4.9X10^{7}$
Zn-69m (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Zr-88	Zirconium (40)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	$9.3X10^{-5}$	$2.5X10^{-3}$
Zr-95 (a)		2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Zr-97 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.
[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (see paragraph (1) of Schedule 10-6 –Determination of A_1 and A_2 of this rule.).
[c] The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
[g] These values apply to unirradiated uranium only.
[h] A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.
[i] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

Table A-2—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225	Actinium (89)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ac-227		$1.0X10^{-1}$	$2.7X10^{-12}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ac-228		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-105	Silver (47)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-108m (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-110m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-111		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Al-26	Aluminum (13)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Am-241	Americium (95)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-242m (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-243 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ar-37	Argon (18)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ar-39		$1.0X10^{7}$	$2.7X10^{-4}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ar-41		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
As-72	Arsenic (33)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-73		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
As-74		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
As-76		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-77		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
At-211	Astatine (85)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$

Au-193	Gold (79)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-194		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Au-195		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-198		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Au-199		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-131	Barium (56)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-140 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Be-7	Beryllium (4)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Be-10		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-205	Bismuth (83)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-206		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-207		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bk-247	Berkelium (97)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Bk-249		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-76	Bromine (35)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Br-77		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-82		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
C-11	Carbon (6)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
C-14		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-41	Calcium (20)	$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-45		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-47		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-109	Cadmium (48)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-113m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-5}$
Ce-139	Cerium (58)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-141		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ce-143		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-144 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-248	Californium (98)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-249		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-250		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-251		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-252		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-253		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-254		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cl-36	Chlorine (17)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cl-38		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-240	Curium (96)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$

Cm-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cm-242		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-243		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-244		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-245		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cm-246		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cm-247		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-248		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Co-55	Cobalt (27)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Co-57		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-5}$
Co-58		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-58m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Co-60		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cr-51	Chromium (24)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Cs-129	Cesium (55)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-131		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-5}$
Cs-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cs-134m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-135		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Cs-136		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-137 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cu-64	Copper (29)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cu-67		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-159	Dysprosium (66)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Dy-165		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-166		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Er-169	Erbium (68)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Er-171		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-147	Europium (63)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-150 (short lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-150 (long lived)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-154		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-155		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-156		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
F-18	Fluorine (9)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-52	Iron (26)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-55		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-59		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Fe-60		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-67	Gallium (31)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ga-68		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-72		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Gd-146	Gadolinium (64)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Gd-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Gd-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Gd-159		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ge-68	Germanium (32)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ge-71		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ge-77		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Hf-172	Hafnium (72)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-175		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-181		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-182		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-194	Mercury (80)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{8}$	$2.7X10^{-5}$
Hg-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-197		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Hg-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{8}$	$2.7X10^{-5}$
Hg-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ho-166	Holmium (67)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ho-166m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-123	Iodine (53)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
I-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-5}$
I-125		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-126		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-5}$
I-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-131		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-133		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-135		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-111	Indium (49)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-113m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-114m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-115m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-189	Iridium (77)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ir-190		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-192		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ir-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
K-40	Potassium (19)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-42		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-43		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Kr-81	Krypton (36)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Kr-85		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{4}$	$2.7X10^{-7}$

Kr-85m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Kr-87		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
La-137	Lanthanum (57)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
La-140		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Lu-172	Lutetium (71)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Lu-173		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-177		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Mg-28	Magnesium (12)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-52	Manganese (25)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-53		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{9}$	$2.7X10^{-2}$
Mn-54		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Mn-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mo-93	Molybdenum (42)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Mo-99		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
N-13	Nitrogen (7)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Na-22	Sodium (11)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Na-24		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Nb-93m	Niobium (41)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Nb-94		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-97		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-147	Neodymium (60)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ni-59	Nickel (28)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-63		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-65		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Np-235	Neptunium (93)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (short-lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (long-lived)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Np-237 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Np-239		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-185	Osmium (76)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-191m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-193		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-32	Phosphorus (15)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-33		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pa-230	Protactinium (91)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pa-231		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Pa-233		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-201	Lead (82)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Pb-202		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-205		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-210 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pb-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pd-103	Palladium (46)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-107		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-109		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-143	Promethium (61)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-144		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-145		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-147		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-148m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-149		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-151		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Po-210	Polonium (84)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pr-142	Praseodymium (59)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pr-143		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-188	Platinum (78)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-193		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-193m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pu-236	Plutonium (94)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-237		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pu-238		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-239		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-240		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Pu-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pu-242		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-244		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-223 (b)	Radium (88)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-224 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-225		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-226 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-228 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Rb-81	Rubidium (37)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-83		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-84		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-86		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Rb-87		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rb(nat)		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Re-184	Rhenium (75)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-5}$

Re-184m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-186		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-187		$1.0X10^{8}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Re-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Re-189		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re(nat)		$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Rh-99	Rhodium (45)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-101		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rh-102		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-102m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-103m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Rh-105		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rn-222 (b)	Radon (86)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ru-97	Ruthenium (44)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ru-103		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-105		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-106 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
S-35	Sulphur (16)	$1.0X10^{5}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sb-122	Antimony (51)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sb-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-44	Scandium (21)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-46		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-47		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-48		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Se-75	Selenium (34)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Se-79		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Si-31	Silicon (14)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Si-32		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sm-145	Samarium (62)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sm-147		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sm-151		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sm-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-113	Tin (50)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-117m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-119m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-121m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-123		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sn-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-82	Strontium (38)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-85		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-85m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sr-87m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Sr-89		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-90 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sr-91		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-92		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
T(H-3)	Tritium (1)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Ta-178 (long-lived)	Tantalum (73)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ta-179		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ta-182		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tb-157	Terbium (65)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tb-158		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tb-160		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-95m	Technetium (43)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-97		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Tc-97m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-98		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-99		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-99m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-121	Tellurium (52)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-121m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Te-123m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-125m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-5}$
Te-127m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-129m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-131m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-132		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-228 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-229 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Th-230		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-231		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-232		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-234 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Th (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ti-44	Titanium (22)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Tl-200	Thallium (81)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-201		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-202		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-204		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tm-167	Thulium (69)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-170		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-171		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$

U-230 (fast lung absorption) (b),(d)	Uranium (92)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-230 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-230 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (fast lung absorption) (b),(d)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U-232 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-233 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-234 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-235 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-236 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-238 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (enriched to 20% or less) (g)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (dep)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
V-48	Vanadium (23)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

V-49		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-178	Tungsten (74)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
W-181		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-185		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-187		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
W-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-122	Xenon (54)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-123		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-131m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-133		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-135		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Y-87	Yttrium (39)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-88		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-90		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-91		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-91m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-92		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-93		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Yb-169	Ytterbium (70)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Yb-175		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zn-65	Zinc (30)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-88	Zirconium (40)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-93 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zr-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-97 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

[a] [Reserved]

[b] Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208(0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228

Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240	Np-240m
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

[c] [Reserved]
[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
[g] These values apply to unirradiated uranium only.

TABLE A-3—GENERAL VALUES FOR A_1 AND A_2

Contents	A_1		A_2		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
Only beta or gamma emitting radionuclides are known to be present	1×10^{-1}	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}	1×10^{1}	2.7×10^{-10}	1×10^{4}	2.7×10^{-7}
Only alpha emitting radionuclides are known to be present	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
No relevant data are available	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

TABLE A-4—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM

Uranium Enrichment[1] wt % U-235 present	Specific Activity	
	TBq/g	Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5	1.0×10^{-7}	2.7×10^{-6}
10	1.8×10^{-7}	4.8×10^{-6}
20	3.7×10^{-7}	1.0×10^{-5}
35	7.4×10^{-7}	2.0×10^{-5}
50	9.3×10^{-7}	2.5×10^{-5}
90	2.2×10^{-6}	5.8×10^{-5}
93	2.6×10^{-6}	7.0×10^{-5}
95	3.4×10^{-6}	9.1×10^{-5}

[1] The figures for uranium include representative values for the activity of the uranium-234 that is concentrated during the enrichment process.

Authority: T.C.A. §§ 68-202-101 et seq., 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 on 10/20/2014 mm/dd/yyyy, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/05/14

Rulemaking Hearing(s) Conducted on: (add more dates). 10/07/14

Date: 10-20-14

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 10/20/14

Notary Public Signature: Tracy H. Long

My commission expires on: 2/8/2017

TRACY H. LONG
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF ROBERTSON

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

~~Feb~~ Feb. 26, 2015

Date

Department of State Use Only

Filed with the Department of State on: 3-3-15

Effective on: 6-1-15

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Director's Office
SUBJECT:	Hunter Education Centers and Public Firing Ranges; Removal of Firing Range Fees for Youth
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	June 25, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	As a housekeeping measure, the TWRA is moving all fees contained in various TWRA rules to the main fee rule found at 1660-01-28. The fees already associated with TWRA firing ranges are being moved to 1660-01-28. Rule 1660-01-27-.02 changes the language to reflect that youths are now exempt from firing range fees.

Public Hearing Comments

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

RULE: 1660-01-27

New	_____
Amendment	X
Repeal	X

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

[ ] Attached hereto are the responses to public 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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The commission anticipates that no small businesses shall be affected by the proposed rule. The rule amendment simply moves the fees associated with TWRA firing ranges to the agency fee rule (1660-01-28) as a housekeeping measure.

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

The commission anticipates no additional reporting, record keeping or other administrative costs.

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

The commission anticipates no impact on small businesses and consumers.

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

The Commission is unaware of alternatives to the proposed rule and does not believe the rule, as proposed, would in any way affect small businesses.
*

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

unaware of federal or state counterparts to this rule.
(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 Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

Impact on Local Governments

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

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

No.

Please describe the increase in expenditures or decrease in revenues:

n/a

*

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For Department of State Use Only

Sequence Number: 03-20-15
Rule ID(s): 5899
File Date: 3/27/15
Effective Date: 6/25/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Director's Office
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
X Repeal

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

Chapter Number	**Chapter Title**
1660-01-27	Rules And Regulations For Hunter Education Centers and Public Firing Ranges
Rule Number	**Rule Title**
1660-01-27-.02	Use Permits - Fees
1660-01-27-.04	Stones River Hunter Education Center, Yanahli WMA and Cheatham WMA Firing Ranges
1660-01-27-.05	Tennessee Wildlife Resources Agency Hunter Education Center and Range Facility
1660-01-27-.06	John Sevier Hunter Education
1660-01-27-.07	Montgomery County Shooting Complex

Amendment

1660-01-27-.02, Use Permits - Fees, shall be amended by deleting paragraphs (1), (2), and (3) in their entirety and by replacing them with a new paragraph (1) and subparagraphs (a), (b), and (c) and redesignating paragraph (4) as subparagraph (1)(d) so that, as amended, the rule shall read:

1660-01-27-.02 Use Permits – Fees

(1) Use Permits - Fees

(a) Before any ~~person~~ adult may shoot at a Hunter Education Center, such ~~person~~ adult must possess a valid ~~entrance ticket~~ permit. This ~~ticket~~ permit must be available for

inspection while using the range.

(b) ~~Entrance ticket~~ Permit fees will be established for each individual center. ~~and shall include up to 2 paper targets. Additional paper targets will be provided for a fee.~~

(c) Persons utilizing classrooms or ~~similar~~ other facilities at hunter education centers will be subject to the same permit fees as shooters unless waived or otherwise specified in this chapter for a particular range.

~~(4)~~ (d) The Executive Director of the Tennessee Wildlife Resources Agency may allow exceptions to and/or waive use permits and fees for hunter education centers and agency ranges.

Authority: T. C. A. §70-1-206 and §70-2-224. Administrative History: Original rule filed May 31, 2000; effective August 14, 2000. Amendments filed July 11, 2011; effective October 9, 2011.

Repeal

1660-01-27-.04, Stones River Hunter Education Center, Yanahli WMA and Cheatham WMA Firing Ranges, shall be repealed in its entirety.

~~(1) Use Fees~~

~~(a) Adult (16 years of age and older) - $5.00 per 2 hours.~~

~~(b) Youth (15 years of age or less) - $1.00 per 2 hours.~~

~~(c) Adult Annual Fee (16 years of age and older) - $100.00.~~

~~(d) Youth Annual Fee (15 years of age or less) - $25.00.~~

Authority: T.C.A. §§70-1-206 and 70-2-224. Administrative History: Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed September 15, 2000, effective November 29, 2000. Amendment filed February 10, 2005; effective April 26, 2005. Amendment filed August 19, 2005; effective November 2, 2005. Amendment filed January 2, 2009; effective March 18, 2009.

Repeal

1600-01-27-.05, Tennessee Wildlife Resources Agency Hunter Education Center and Range Facility, shall be repealed in its entirety.

~~(1) Use Fees~~

~~(a) $8.00 per hour (all ages); $12.00 per hour for two persons sharing a lane, if and when allowed.~~

~~(b) Annual Fee (all ages) - $250.00~~

~~(c) Group fee - $100.00 per hour with $500 minimum.~~

~~(d) Classroom fee - $35.00 per hour and a $150.00 damage deposit.~~

~~(e) Surcharge of $50.00 for after-hour use of facilities in addition to regular rates.~~

Authority: T.C.A. §§70-1-206 and 70-2-224. Administrative History: Original rule filed May 31, 2000; effective August 14, 200. Amendment filed September 15, 2000, effective November 29, 2000. Amendment filed June 21,

2002; effective September 4, 2002. Amendment filed February 10, 2005; effective April 26, 2005. Amendment filed May 31, 2013; effective August 29, 2013.

Repeal

1660-01-27-.06, John Sevier Hunter Education Center, shall be repealed in its entirety.

~~(1) Use Fees~~

~~(a) Annual Fee (all ages) - $420.00~~

~~(b) Youth (15 years of age or less) - $1.00 per 2 hours.~~

~~(c) Adult Annual Fee (16 years of age and older) - $100.00.~~

~~(d) Youth Annual Fee (15 years of age or less) - $25.00.~~

Authority: T. C. A. §70-1-206 and §70-2-224. Administrative History: Original rule filed August 8, 2000; effective November 14, 2000. Amendment filed February 10, 2005; effective April 26, 2005.

Repeal

1660-01-27-.07, Montgomery County Shooting Complex, shall be repealed in its entirety.

~~(1) Use Fees~~

~~(a) Adult (16 years of age and older) - $5.00 per 2 hours~~

~~(b) Youth (15 years of age or less) - $1.00 per 2 hours~~

~~(c) Adult Annual (16 years of age and older) - $100.00~~

~~(d) Youth Annual (15 years of age or less) - $25.00~~

Authority: T. C. A. §70-1-206 and §70-2-224. Administrative History: Original rule filed January 29, 2007; effective April 14, 2007.

* 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
Jeff McMillin	✓			
Chad Baker				✓
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeffrey H. Griggs	✓			
Connie King	✓			
Tom Rice				✓
Jim Ripley	✓			
James Stroud				✓
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 01/16/2015 (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: 11/21/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 01/16/2015

Date: 2/25/15

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 2.25.15

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Director's Office
SUBJECT:	Refuges, Wildlife Management Areas, and Public Hunting Areas
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	June 25, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	As a housekeeping measure, the TWRA is moving all fees contained in various TWRA rules to the main fee rule found at 1660-01-28. The fees already associated with horseback riding, bicycling, and off-highway vehicle use on North Cumberland Wildlife Management Area (WMA) are being moved to 1660-01-28.

Public Hearing Comments

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

RULE: 1660-01-14.-15

New	_____
Amendment	__X__
Repeal	_____

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

[ ] Attached hereto are the responses to public 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), ail agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The commission anticipates that no small businesses shall be affected by the proposed rule. The rule amendment moves the fees associated with horseback riding, bicycling, and off highway vehicle use on North Cumberland Wildlife Management Area to the agency fee rule (1660-01-28) as a housekeeping measure.

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

The commission anticipates no additional reporting, record keeping or other administrative costs.

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

The commission anticipates no impact on small businesses and consumers.

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

The Commission is unaware of alternatives to the proposed rule and does not believe the rule, as proposed, would in any way affect small businesses.

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

The Commission is unaware of federal or state counterparts to this rule.

(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 Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

Impact on Local Government

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

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

No.

Please describe the increase in expenditures or decrease in revenues:

n/a

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Sequence Number: 03-21-15
Rule ID(s): 5900
File Date: 3/27/15
Effective Date: 6/25/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Director's Office
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1660-01-14	Rules And Regulations For Refuges, Wildlife Management Areas, And Public Hunting Areas
Rule Number	**Rule Title**
1660-01-14-.15	Fees for Use of North Cumberland Wildlife Management Area

Amendment

1660-01-14-.15, Fees for Use of North Cumberland Wildlife Management Area, shall be amended by changing the title of the rule to "Impact Permits for Use of Wildlife Management Areas."

Amendment

1660-01-14-.15, Impact Fees for Use of Wildlife Management Areas, shall be amended by deleting paragraph (1) in its entirety and by replacing it with a new paragraph (1) so that, as amended, it shall read:

~~(1) Fees for horseback riding, bicycling, and off highway vehicle use shall be as follows (youths under age thirteen (13) exempted):~~

~~(a) Residents~~

~~1. Annual Fee - $60.00 or possession of an annual or permanent Hunting and Fishing License and any permit (required to hunt on the North Cumberland Wildlife Management Area) or any Sportsman License.~~

~~2. Daily Fee - $12.00~~

~~(b) Non-Residents~~

~~1. Annual Fee - $190.00 or possession of a Non-Resident Annual "All Game: hunting license and any permit required to hunt on the North Cumberland Wildlife Management Area.~~

~~2. Daily Fee - $30.00~~

(1) A High Impact Habitat Conservation Permit is required for riding hoofed animals, bicycling, and off highway vehicle use on designated wildlife management areas. Persons holding a valid hunting license with an appropriate permit to hunt on a wildlife management area and youths under age thirteen (13) are exempt.

Authority: T.C.A. §§70-1-206 and 70-2-225. Administrative History: Original rule filed August 5, 2002; effective October 19, 2002. Amendment filed September 16, 2003; effective November 30, 2003. Amendment filed February 10, 2005; effective April 26, 2005. Amendment filed June 3, 2008; effective August 17, 2008.

Authority: T.C.A. §§70-1-206 and 70-2-225. Administrative History: Original rule filed August 5, 2002; effective October 19, 2002. Amendment filed September 16, 2003; effective November 30, 2003. Amendment filed February 10, 2005; effective April 26, 2005. Amendment filed June 3, 2008; effective August 17, 2008.

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

Board Member	Aye	No	Abstain	Absent
Jeff McMillin	✓			
Chad Baker				✓
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeffrey H. Griggs	✓			
Connie King	✓			
Tom Rice				✓
Jim Ripley	✓			
James Stroud				✓
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 01/16/2015 (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: 11/21/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 01/16/2015

Date: 2/25/15

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 2-25-15

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

Herbert H. Slatery III

3/20/2015 Herbert H. Slatery III
Attorney General and Reporter

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Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Director's Office
SUBJECT:	Fishing – TWRA Lakes
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	June 25, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	As a housekeeping measure, the TWRA is moving all fees contained in various TWRA rules to the main fee rule found at 1660-01-28. The fees already associated with TWRA Lakes are being moved to 1660-01-28.

Public Hearing Comments

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

RULE: 1660-01-05-.03

New	_____
Amendment	X
Repeal	_____

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

[ ] Attached hereto are the responses to public 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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The commission anticipates that no small businesses shall be affected by the proposed rule. The rule amendment simply moves the fees associated with TWRA firing ranges to the agency fee rule (1660-01-28) as a housekeeping measure.

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

The commission anticipates no additional reporting, record keeping or other administrative costs.

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

The commission anticipates no impact on small businesses and consumers.

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

The Commission is unaware of alternatives to the proposed rule and does not believe the rule, as proposed, would in any way affect small businesses.
*

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

unaware of federal or state counterparts to this rule.
(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 Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

Impact on Local Governments

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

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

No.

Please describe the increase in expenditures or decrease in revenues:

n/a

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Sequence Number: 03-22-15
Rule ID(s): 5901
File Date: 3/27/15
Effective Date: 6/25/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Director's Office
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1660-01-05	Rules And Regulations For Fishing
Rule Number	**Rule Title**
1660-01-05-.03	TWRA Lakes

Amendment

1660-01-05-.03, TWRA Lakes, shall be amended by deleting paragraph (14) in its entirety.

~~(14) Use Fees~~

~~(a) Resident/Non-Resident Bedford Lake 1 Day Fishing Permit (Type 65) - $5.00~~
~~(b) Daily TWRA Lake Fishing Permit (Type 191) - $5.00~~
~~(c) TWRA Lake Boat Rental Permit (Type 192) - $8.00~~
~~(d) Annual TWRA Lake Fishing Permit (Type 193) - $40.00~~

Authority: T.C.A. §§69-9-209, 70-1-206 and 70-4-107. Administrative History: Original rule certified May 8, 1974. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 19 1980; effective July 3, 1980. Repeal and new rule filed February 4, 1983; effective March 7, 1983. Amendment filed February 20, 1986; effective March 22, 1986. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed February 26, 1987; effective April 12, 1987. Amendment filed April 20, 1988; effective June 4 1988. Amendment filed

* 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
Jeff McMillin	✓			
Chad Baker				✓
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeffrey H. Griggs	✓			
Connie King	✓			
Tom Rice				✓
Jim Ripley	✓			
James Stroud				✓
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 01/16/2015 (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: 11/21/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 01/16/2015

Date: 2/25/15

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 2-25-15

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Tennessee Securities Rules
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 48-1-116
EFFECTIVE DATES:	June 14, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule will correct typographical, grammatical, and rulemaking drafting inconsistencies, and updates Chapter 0780-04-01 of the Tennessee Securities Rules pursuant to statutory changes that have occurred since the last general update to the Chapter.

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.

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-01 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

Impact on Local Governments

Pursuant to T.CA §§ 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 proposed rules will not impact local governments.

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Sequence Number: 03-11-15
Rule ID(s): 5888
File Date: 3/6/15
Effective Date: 6/14/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):
X 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**
0780-04-01	General Administration
Rule Number	**Rule Title**
0780-04-01-.01	Retained Powers
0780-04-01-.02	Short Title
0780-04-01-.03	Definitions
0780-04-01-.04	Administration of the Act
0780-04-01-.05	No Action Letters and Interpretive Opinions
0780-04-01-.06	Repealed

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-04-01
GENERAL ADMINISTRATION

TABLE OF CONTENTS

0780-04-01-.01 Retained Powers
0780-04-01-.02 Short Title
0780-04-01-.03 Definitions
0780-04-01-.04 Administration of the Act
0780-04-01-.05 No-Action Letters and Interpretive Opinions
0780-04-01-.06 Repealed

Amendment

Chapter 0780-04-01 General Administration is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-01-.01 RETAINED POWERS.

It is the express intent of these rules that such powers as are herein delegated by the ~~C~~commissioner are also retained and may be exercised by the ~~C~~commissioner at the ~~C~~commissioner's election.

Authority: T.C.A. §§48-1-115 and 48-1-116~~(a)~~.

0780-04-01-.02 SHORT TITLE.

These rules may be cited as the Tennessee Securities Rules.

Authority: T.C.A. §§48-1-115 and 48-1-116~~(a)~~.

0780-04-01-.03 DEFINITIONS.

(1) When used in these rules and in the Tennessee Securities Act of 1980, as amended, unless the context otherwise requires:

(a) "Act" shall mean Chapter 866 of the Public Acts of 1980, otherwise known as the Tennessee Securities Act of 1980, as amended, and its codification in the Tennessee Code Annotated.

(b) "Assistant ~~C~~commissioner" shall mean the ~~A~~assistant ~~C~~commissioner for the Securities Division of the Department of Commerce and Insurance of the state of Tennessee, or any successor person authorized to exercise similar functions.

(c) "CRD System" shall mean the NASAA/FINRA~~NASD~~ Central Registration Depository System, commonly known as "CRD" and/or "Web CRD".

(d) "Division" shall mean the ~~A~~assistant ~~C~~commissioner, staff, employees, and agents of the Securities Division of the Department of Commerce and Insurance of the state of Tennessee or such other agency as shall administer the Act or any successor statute.

(e) "FINRA" shall mean the Financial Industry Regulatory Authority.

(fe) "Government Securities Broker-Dealer" shall mean a broker-dealer who effects transactions only in securities issued or guaranteed by the United States ~~of America~~ or an instrumentality thereof.

(gf) "IARD" shall mean the Investment Adviser Registration Depository as operated by the FINRA~~NASD~~ in cooperation with NASAA, other states, and the United States ~~of America~~.

(hg) "NASAA" shall mean the North American Securities Administrators Association, Inc.

(ih) "NASD" shall mean the National Association of Securities Dealers, Inc. and/or the National Association of Securities Dealers Regulation, Inc. (now known as FINRA).

(ji) "Nasdaq National Market" shall mean a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.

(k) "Rules" shall mean the Rules of the Department of Commerce and Insurance, Securities Division, as set forth in Chapter 0780-04.

(lj) "SEC" shall mean the Securities and Exchange Commission of the United States ~~of America~~ or its staff, as appropriate.

(mk) "Security" shall include the practice of "equity funding", "security funding", or "life funding" whereby mutual fund shares and insurance contracts are sold as a package with mutual fund shares being pledged as collateral for loans, the proceeds of which are used to pay the premium on life insurance policies.

(nl) "State" shall mean any state, territory, or possession of the United States ~~of America~~, the District of Columbia, and Puerto Rico.

(om) "Substantially all of the voting securities of the bank or other bank holding company" as used in T.C.A. §48-1-103(b)(10) shall mean eighty percent (80%) or more of each class of such voting securities.

(pn) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. §4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these ~~r~~Rules.

(2) In construing terms used in these ~~r~~Rules and in the Act, the ~~C~~commissioner, to the extent consistent with the purposes fairly intended by the policy and provisions of the Act, will consider definitions, case law, SEC rules, and interpretive releases under the following federal statutes:

(a) The Securities Act of 1933 (the "1933 Act");

(b) The Securities Exchange Act of 1934 (the "1934 Act");

(c) The Trust Indenture Act of 1939 (the "Trust Indenture Act");

(d) The Investment Company Act of 1940 (the "Investment Company Act"); and

(e) The Investment Advisers Act of 1940 (the "Investment Advisers Act").

(3) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these ~~r~~Rules.

Authority: T.C.A. §§48-1-103(b)(10), 48-1-115, 48-1-116(a), and Public Acts of 2001, Chapter 61.

0780-04-01-.04 ADMINISTRATION OF THE ACT.

(1) General.

(a) The Ccommissioner delegates to the Aassistant Ccommissioner all of the power and duties granted to and imposed upon the Ccommissioner by the Act, except the power:

1. To impose any sanction pursuant to T.C.A. §§48-1-104, 48-1-108, 48-1-109, 48-1-112, or 48-1-116, or 48-1-121 in any contested case, as such term is defined in the UAPA;

2. To adopt any rule as such term is defined in the UAPA;

3. To grant immunity to any person pursuant to T.C.A. §48-1-118(d); and

4. To appoint any investigative agent pursuant to T.C.A. §48-1-118(e) and (f).

(b) Without limiting the foregoing delegation, the Aassistant Ccommissioner is expressly empowered to:

1. Issue orders of investigation pursuant to T.C.A. §48-1-118(a);

2. Conduct investigations as provided by T.C.A. §48-1-118(b);

3. Issue exemption orders pursuant to T.C.A. §48-1-103(b)(11);

4. Issue orders of effective registration, orders of denial, and other orders not involving any sanctions; and

5. Accept, on behalf of the Ccommissioner, settlement agreements reached between the Division and any person pursuant to T.C.A. §4-5-105.

(c) The Division's office hours shall be between 8:00 a.m. and 4:30 p.m. (Central Time) on weekdays, except legal holidays. Normally, appointments will not be made before 8:30 a.m. or after 4:00 p.m.

(d) Unless expressly required or requested otherwise, only the original executed copy of each form is required. If a document or form pertains to more than one security, subject, or application, a separate copy and transmittal letter for each security, subject, or application shall be filed, except as expressly provided otherwise elsewhere in these rRules.

(2) Filing Fees.

(a) All fees required by the Act that are submitted directly to the Division shall be made by check payable to the order of the Tennessee Department of Commerce and Insurance. Certified checks are not required.

(b) Pursuant to T.C.A. §48-1-107(b), the minimum non-refundable filing fee for all applications for securities registration shall be three hundred dollars ($300). If an application is withdrawn prior to effectiveness or before a pre-effective stop order is entered, the Division shall retain the minimum filing fee and refund the remainder, if any, to the applicant in accordance with subparagraph (2)(c) of this Rulebelow.

(c) Refunds of refundable fees will not be made unless a written request is filed with the Division specifying the following:

1. The name of the applicant;

2. The law under which the application was filed and the approximate date of filing; and

3. The amount of the funds claimed as due and the grounds upon which the claim is made.

(3) Filing Requirements.

(a) Applications, reports, and registration statements, including exhibits, shall be filed on good quality white paper, eight and one-half (8 ½) inches ~~-~~by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size. Tables, charts, maps, and financial statements may be on larger paper if folded to those sizes and the final prospectus may be on smaller paper if the registrant so desires.

(b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying and/or scanning.

(c) Exhibits may be attached or filed separately, properly marked or identified.

(d) Each copy of registration statements, prospectuses, offering circulars, and offering memoranda must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.

(e) 1. All applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information required or requested pursuant to the Act or these ~~Tennessee Securities~~ Rules may be submitted to the Division in the paper format prescribed in this paragraph (3) or through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.

2. Applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division shall be in clear, easily accessible, and readable formats which shall be suitable for reproduction on good quality white paper eight an one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size.

3. Upon conversion and preservation through the CRD System or the Division's electronic data gathering, access, and retrieval methods, all original applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed in the paper format prescribed in this paragraph (3) may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.

(4) Forms.

(a) An application shall be prepared in accordance with the form prescribed thereof as in effect on the date of filing. An application shall be deemed filed on the proper form unless objection to the form is made by the Division prior to the effective date of the application. The following forms, as in effect at the time of use, are approved for filing with the Division:

1. "Form U-1", Uniform Application to Register Securities;

2. "Form U-2", Uniform Consent to Service of Process (naming the Commissioner of Commerce and Insurance as the party to be served);

3. "Form U-2A", Uniform Form of Corporate Resolution;

4. "Form U4", Uniform Application for Securities Industry Registration or Transfer;

5. "Form U5", Uniform Termination Notice for Securities Industry Registration;

~~6. U-7, Registration Form for Small Corporate Offerings;~~

67. "Form BD", Uniform Application for Broker-Dealer Registration;

78. "Form BDW", Uniform Request for Broker-Dealer Withdrawal;

89. "Form ADV", Uniform Application for Investment Adviser Registration;

910. "Form ADV-E~~H~~", Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser ~~Application for a Temporary or Continuing Hardship Exemption~~;

101. "Form ADV-W", Notice of Withdrawal From Registration as an Investment Adviser;

112. "Form D", Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption;

~~123. IN-0555, Surety Bond for Securities Dealers or Investment Advisers, or a Uniform Surety Bond as adopted by NASAA;~~

1324. "IN-0911", Application for Registration as an Oil and Gas Issuer-Dealer;

1435. "Form NF", Uniform Investment Company Notice Filing;

1546. "IN-1460", Form for Accredited Investors Notice Filing; ~~and~~

1657. "IN-1461", Form for Employee Stock Option/Purchase Plan Notice Filing; and

176. "IN-1493", Designation of Accountant.

(b) All instructions on the above named forms are applicable, except as expressly provided elsewhere in these ~~r~~Rules, and are adopted verbatim and incorporated herein by reference.

(c) In cases where ~~a~~the form, as set out in this subparagraph (4)(a), directly or indirectly requires the maintenance of certain books and records, the registrant shall maintain

adequate books and records to comply with the filing requirements of the form and all books and records requirements as provided in the Act and the Rules.

(5) Division Records.

(a) In compliance with the Tennessee Public Records Act, T.C.A. §10-7-503(a)(2)(A-B), ~~T~~the Division shall make available to the public for inspection any part of an application to register securities, notice filing, or a filing pursuant to a claim of exemption from securities registration, except as set forth in subparagraph (5)(f) of this Rule~~below~~.

(b) 1. The Division shall make available to the public for inspection in connection with any registered broker-dealer or investment adviser or applicant for broker-dealer or investment adviser registration or notice filing by an investment adviser:

(i) The current Form BD or the current Form ADV and all schedules and exhibits thereto; and

(ii) Financial statements filed pursuant to these ~~r~~Rules within the preceding five (5) years.

2. Any ~~N~~noncurrent Form BD~~'s~~ filings, noncurrent Form ADV~~'s~~ filings, noncurrent schedules and exhibits to such forms and financial statements filed pursuant to these ~~r~~Rules prior to the preceding five (5) years may be preserved by the Division in paper or electronic format for public inspection or may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.

(c) With respect to any registered agent or investment adviser representative or application for an agent's or investment adviser representative's registration, the Division shall make available to the public for inspection the Form U4 and Form U5 of such agent or investment adviser representative, together with all exhibits.

(d) The Division shall not make available to the public for inspection any document or other material it obtains in connection with any matter which is the subject of a private investigation or that it obtains for the purpose of determining whether to commence a private or public investigation until such time, if ever, such document or other material is used in litigation or in a contested case.

(e) Any document which is available for inspection shall also be available for copying (including electronic reproduction through the CRD System or other~~an~~ electronic data gathering, access, and retrieval method acceptable to the Division) upon payment of the cost of copies as determined by the Division from time to time.

(f) Requests for Confidentiality.

1. Introduction. Upon the grant of a request made pursuant to part (5)(f)2. of this Rule~~below~~, the A~~a~~ssistant C~~c~~ommissioner will withhold from public inspection, for such time as in the A~~a~~ssistant C~~c~~ommissioner's judgment is necessary, information received in connection with a registration statement, application, or report, if the A~~a~~ssistant C~~c~~ommissioner finds that such information is reasonably shown to be:

(i) Proprietary information that is in fact confidential, including, but not limited to, trade secrets, the release of which would be damaging or prejudicial to the business concerned; or

(ii) Financial information that is in fact confidential, the release of which would be damaging or prejudicial to the person concerned.

2. Request for Confidentiality. A request for confidential treatment of any information received in connection with any registration statement, application, or report submitted to the Aassistant Ccommissioner should accompany the submission of such information and such information must be submitted separately from other parts of the filing and marked "Confidential Treatment Requested". The request for confidentiality will itself be available for public inspection and should not contain information for which confidential treatment is requested. Such request must be signed by the person filing the registration statement, application, or report and contain the following:

(i) A statement identifying the information which is the subject of the request and the registration statement, application, or report relating thereto;

(ii) A statement of the grounds upon which the request is made, including a statement as to the confidentiality of the information and the measures taken to protect its confidentiality, and a statement of the adverse consequences which are expected to result if the information is disclosed through the public records of the Division;

(iii) A statement of the specific time for which confidential treatment of the information is necessary and the basis for such conclusions; and

(iv) A statement of the extent to which such information has been or will be disclosed to present or proposed investors, franchisees, lenders, or other persons.

3. Denial of Request. Material for which confidential treatment is requested shall not be deemed filed unless the request is granted, and may be withdrawn by the applicant if the request is denied, unless (i) the Aassistant Ccommissioner has already taken an official action in reliance on such information prior to receiving the request for confidential treatment, (ii) the Aassistant Ccommissioner determines that the withdrawal of such information is otherwise contrary to the public interest or the protection of investors, or (iii) the material for which confidential treatment is requested is otherwise required to be filed with the Division elsewhere in these rRules. If withdrawn, such information will not be considered by the Aassistant Ccommissioner in connection with the registration statement, application, or report.

4. Granting Request. If a request for confidential treatment is granted, the person making such request will be notified in writing, the information will be marked "confidential" and kept separate from the public file, and the registration statement, application, or report will be noted with substantially the following legend: "Additional portions of this filing have been granted confidential treatment and are contained in a separate confidential file."

5. Disclosure of Confidential Information.

(i) Information held confidential pursuant to part (5)(f)4. of this Rule ~~above~~ may be disclosed by the Aassistant Ccommissioner, at any time and in the Aassistant Ccommissioner's sole discretion, whether on the Aassistant Ccommissioner's own motion or upon the request of any person.

(I) To other state or federal regulatory agencies, in accordance with law;

(II) When necessary or appropriate in any proceeding or investigation pursuant to the law under which the information was filed; or

(III) Upon a determination by the Aassistant Ccommissioner that continued confidential treatment is no longer justified because the reasons therefore no longer exist or because public interest in disclosing such information outweighs the public interest in not doing so. If the Aassistant Ccommissioner concludes that the disclosure of such information is necessary and in the public interest and that it is impractical under the circumstances to give notice to the person who requested confidential treatment of the information, the information may be disclosed without notice. Otherwise, the person who requested confidential treatment of such information will be given notice that the release of such information is under consideration and the reasons therefore, and an opportunity to make written representations promptly, within not more than five (5) business days, regarding the continued need and justification for continued confidentiality.

(ii) Requests to Inspect Confidential Information. A request to inspect confidential information pursuant to subitem (5)(f)5.(i)(III) of this Rule should be in writing, signed by the person making the request, and must state the justification for the request. A copy of the request for inspection will ordinarily be forwarded to the person who requested confidential treatment of the information in accordance with subitem (5)(f)5.(i)(III) of this Rule. If a request for inspection should be held confidential, the reasons therefore must be stated in such request, in accordance with part (5)(f)2. of this Ruleabove.

(iii) Nothing contained herein shall be interpreted as affording any person a right to withdraw information once it has been received by the Aassistant Ccommissioner, except as provided in part (5)(f)3. of this Ruleabove.

6. All documents described in paragraph (5) of this Rule may be maintained or submitted to the Division through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.

Authority: T.C.A. §§48-1-103(b)(11), 48-1-104, 48-1-107(b), 48-1-108, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115(f), 48-1-116(a), 48-1-117, 48-1-117(c), 48-1-117(d), 48-1-118, 48-1-121, 48-1-125, 48-1-125(a), 4-5-105, 10-7-503(a)(2)(A-B), Public Acts of 1997, Chapter 164, §8, and Public Acts of 2001, Chapter 61.

0780-04-01-.05 NO-ACTION LETTERS AND INTERPRETIVE OPINIONS.

(1) In case of any question concerning the Act, the Division staff may in its sole discretion entertain a request for a no-action letter or interpretive opinion. If issued, a no-action letter or an interpretive opinion only expresses the current position of the Division staff with respect to enforcement, and is not binding on the Ccommissioner or third parties. A request for a no-action letter or interpretive opinion must be in writing and in the format described in SEC Release No. 33-6269.

(2) The Division will maintain an index, chronologically and by statutory section, of all no-action letters and interpretive opinions issued. Copies of such letters may be reviewed in the

Division's office and copies thereof obtained upon payment of reasonable costs of duplication.

Authority: T.C.A. §§48-1-1157~~(e), and~~ 48-1-116~~(a)~~, and 48-1-117(e).

0780-04-01-.06 REPEALED.

Authority: Public Acts of 1980, Chapter 866, §16(a).

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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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 2/20/15 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: 2/20/15

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 2/20/15

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/16

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

March 11, 2015
Date

Department of State Use Only

Filed with the Department of State on: 3/16 1:15

Effective on: 6/14/15

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Securities Registration and Exemptions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 48-1-116
EFFECTIVE DATES:	June 14, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule will correct typographical, grammatical, and rulemaking drafting inconsistencies, and updates Chapter 0780-04-02 of the Tennessee Securities Rules pursuant to statutory changes that have occurred since the last general update to the Chapter.

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.

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-02 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

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 proposed rules will not impact local governments.

(4)

Department of State
Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 03-12-15
Rule ID(s): 5889
File Date: 3/16/15
Effective Date: 6/14/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):
X 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**
0780-04-02	Securities Registration and Exemptions
Rule Number	**Rule Title**
0780-04-02-.01	Registration by Coordination
0780-04-02-.02	Registration by Qualification
0780-04-02-.03	Securities Registration Generally
0780-04-02-.04	Advertising and Sales Literature
0780-04-02-.05	Renewals
0780-04-02-.06	Standards of Fairness and Reasonableness
0780-04-02-.07	Non-Profit Exemption
0780-04-02-.08	Uniform Limited Offering Exemption
0780-04-02-.09	Successor Corporate Issuers
0780-04-02-.10	NASDAQ/NMS Exemption
0780-04-02-.11	Reserved

0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.14	Notice Fillings for Securities Sold to Accredited Investors
0780-04-02-.15	Bank Holding Company Exemption
0780-04-02-.16	Unsolicited Transaction Exemption

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-04-02
SECURITIES REGISTRATION AND EXEMPTIONS

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0780-04-02-.04	Advertising and Sales Literature	0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.05	Renewals	0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.06	Standards of Fairness and Reasonableness	0780-04-02-.14	Notice Filings for Securities Sold to Accredited Investors
0780-04-02-.07	Non-Profit Exemption		
0780-04-02-.08	Uniform Limited Offering Exemption	0780-04-02-.15	Bank Holding Company Exemption
		0780-04-02-.16	Unsolicited Transaction Exemption

AMENDMENT

Chapter 0780-04-02 Securities Registration and Exemptions is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-02-.01 REGISTRATION BY COORDINATION.

(1) Securities may be registered by coordination with SEC registration. A registration statement and a prospectus for such securities shall be filed with a completed and properly executed Form U-1, including all applicable exhibits thereto, a Form U-2, a Form U-2A (if applicable), and the appropriate filing fee computed in accordance with T.C.A. §48-1-107(b). The registrant shall also provide, or in Item 8(k) of the Form U-1 undertake to provide promptly if unavailable on the date of filing:

(a) Any additional exhibits included in Part II of the applicable SEC registration statement;

(b) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and

(c) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the registration statement does not include any untrue statement of a material fact required to be stated therein or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

(2) Only those offerings registered by coordination in this state on Forms 1-A, S-1, S-2, S-3, S-4, S-11, SB-1, and SB-2, or any successors to these forms, are subject to review under the applicable portions of rRule 0780-04-02-.06.

(3) Until such time as an applicant has complied with all filing requirements and Division comments, the applicant may waive automatic concurrent effectiveness by written notice to the Division. Once an applicant has fully complied with the filing requirements set forth in the Act and in these rRules, and has satisfied all outstanding comments issued by the Division, the Ccommissioner shall make the application to register effective or conditionally clear the application to register until notification of SEC effectiveness, subject to any condition or limitations imposed by the Division. The Division shall give notice by mail of the effective date of registration to each registrant, but such notice shall be conditioned upon the

Division's receipt of notice from the applicant of the date that its registration statement was made effective by the SEC.

(4) Every registration statement covering securities registered by coordination is effective for one (1) year from the effective date. Renewals of registrations by coordination may be made in accordance with ~~r~~Rule 0780-04-02-.05.

Authority: T.C.A. §§~~-~~48-1-105, 48-1-107, 48-1-115, and 48-1-116~~(a)~~.

0780-04-02-.02 REGISTRATION OF QUALIFICATION

(1) An application filed pursuant to T.C.A. §48-1-106 shall contain, at a minimum, all of the information and the documents specified in Schedule A of the 1933 Act to the extent applicable, unless filed pursuant to a registration statement or notice filing format prescribed by the SEC ~~or filed on the Form U-7~~.

(2) A prospectus or offering circular shall be submitted with a completed and properly executed Form U-1 and the appropriate filing fee computed in accordance with T.C.A. §48-1-107(b), and shall contain or be accompanied by the following information;

(a) The Uniform Consent to Service of Process on Form U-2 required by T.C.A. §48-1-124(e);

(b) The Uniform Form of Corporate Resolution on Form U-2A, if applicable;

(c) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and

(d) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the prospectus or offering circular does not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(3) All notices, circulars, advertisements, sales literature, or communications required to be filed by T.C.A. §48-1-106(b)(5) shall be filed according to the terms and conditions set forth in ~~r~~Rule 0780-04-02-.04 ~~of these rules~~.

(4) All offerings registered by qualification are subject to review under the applicable portions of ~~r~~Rule 0780-04-02-.06.

(5) Every registration statement covering securities registered by qualification is effective for one (1) year from the effective date. Renewals of registrations by qualification may be made in accordance with ~~r~~Rule 0780-04-02-.05.

Authority: T.C.A. §§~~-~~48-1-106, 48-1-107, 48-1-113, 48-1-115, ~~and~~ 48-1-116~~(a)~~, 48-1-121(c), 48-1-124(e), and Public Acts of 2001, Chapter 61.

0780-04-02-.03 SECURITIES REGISTRATION GENERALLY.

(1) Review Procedures for Registrations.

(a) At the time an application to register securities that is subject to review under either paragraph (3) of R~~r~~ule 0780-04-02-.01~~(3)~~ or ~~rule~~ paragraph (4) of Rule 0780-04-02-.02~~(4)~~ is filed and the proper fee is received, the Division may in its sole discretion

make a preliminary review of the application to determine which of the following review procedures will be employed in connection with the filing:

1. Deferred Review. If the Division staff has determined after an initial analysis that the application is so deficient or presents problems so serious that the Division could not justify spending more time in reviewing the application, review will be deferred and the applicant will be promptly notified. Detailed comments will not be prepared or issued and it will be the responsibility of the applicant to consider whether to withdraw or amend the application.

2. Summary Review. This category of review involves notification to an applicant that the Division staff has made only a summary review of the application and only such comments as may arise from such review will be made. In such cases, applicants may be required to furnish as supplemental information certain representations on behalf of the issuer, including representations that the issuer is aware that the Division staff has made only a summary rather than a detailed full review of the application.

3. Full Review. In the final category of review, applications will receive a more complete accounting, financial, and legal review. The Division staff will undertake to provide timely comments regarding the application for registration, which may include requirements for additional exhibits or supplemental data. Upon satisfactory compliance with any comments, the Division shall declare the application effective or conditionally clear the application pending notice of SEC effectiveness without a receipt of representation letters fromform the persons mentioned in the preceding part (1)(a)2.

(b) Notwithstanding the type of review performed, the burden of compliance with the Act and these rRules remains with the issuer and as a matter of law cannot be shifted to the Division's staff.

(2) Post Effective Reports.

(a) The Aassistant Ccommissioner may as a condition to registration require the person who filed the application for registration to file specified current financial information on a periodic basis. The Aassistant Ccommissioner may also as a condition to registration require the filing of periodic reports on the use of proceeds. Such information may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or any state securities agency.

(b) The person who filed the application for registration shall file a final sales report of the dollar amount and number of securities sold in this state, provided, however, that no final sales report shall be due with respect to any twelve (12) month period covering an initial registration or a renewal pursuant to which the maximum filing fee was paid pursuant to T.C.A. §48-1-107(b). Unless an extension is granted by the Aassistant Ccommissioner, such report shall be filed within thirty (30) days after the expiration of the effectiveness of the registration statement or the termination or completion of the offering of the securities covered by the registration statement, whichever is earlier. The report may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or any state securities agency.

(3) Legend Requirement.

(a) Offering documents for securities to be registered in this state and registered or to be registered with the SEC under the 1933 Act shall contain on the cover page

substantially the following legend in capital ~~and~~ letters and, if printed, in boldface roman type at least as high as ten- (10) point modern type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(b) Offering documents for securities to be registered in this state that will not be registered with the SEC under the 1933 Act shall contain on the cover page substantially the following legend in capital letters and, if printed, in boldface roman type at least as high as ten (10) -point modern type:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN REGISTERED WITH THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE. SUCH REGISTRATION DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF ANY SECURITY, NOR HAS THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(4) Prospectuses.

(a) Preliminary Prospectuses. The publication and distribution of preliminary prospectuses in connection with proposed offerings to Tennessee residents shall be permitted if such preliminary ~~-~~prospectuses:

1. Are used for the purpose of obtaining indications of interest (as distinguished from firm commitments to purchase) in the proposed securities;

2. Are filed with the Division no later than the date of first use in this state; and

3. Contain the legend required by the SEC, if applicable, or substantially the following legend in capital letters and, if printed, in at least as high as ten (10) -point modern boldface roman type on the cover~~:~~;

AN APPLICATION TO REGISTER THESE SECURITIES HAS BEEN FILED WITH THE TENNESSEE COMMISSIONER OF COMMERCE AND INSURANCE. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION BECOMES EFFECTIVE.

(b) Any person filing a registration statement pursuant to T.C.A. §48-1-105 that is described in paragraph (2) of Rrule 0780-04-02-.01~~(2)~~ or pursuant to T.C.A. §48-1-106 shall promptly file with the Division all amendments to each registration statement (other than amendments which merely delay the effective date of the registration statement) and all supplements to each addition or deletion to the offering material made in the- amendment.

(c) After the effective date of an application to register securities, no prospectus shall be used in this state unless it contains all supplements to the prospectus as of the date of its use.

(5) Abandonment. If an application to register securities has been on file with the Division for more than one (1) year without becoming registered, or if no written communication addressing offering terms in response to comments or a substantive amendment is received in connection with the application for a period of six (6) months, the Division may, in its discretion, determine whether the application for registration has been abandoned by the following procedure:

(a) Notice will be sent to the correspondent designated on the Form U-1, as amended, by certified mail, return receipt requested, at the correspondent's most recent address designated on the Form U-1. Such notice will inform the correspondent that the application for registration is out of date and must either be updated or withdrawn within thirty (30) days after the date of such notice.

(b) If the correspondent fails to respond to such a notice by filing a substantive update or withdrawing the application for registration, the Division may enter an order declaring the application for registration abandoned.

(c) If applicable, the applicant may request a return of the refundable portion of the registration fee pursuant to subparagraph (2)(c)) of Rule 0780-04-01-.04-(2)(c).

(6) Blank-Check Offerings.

(a) This subparagraph (6) is not intended to apply to offerings to be registered where the type of business or property is identified in the registration statement but the specific property or investment has not been identified. Specifically, this subparagraph (6) shall not be applied to non-specified blind-pool offerings with adequate disclosure of investment objectives.

(b) An issuer must disclose with specificity, in the registration statement, its business plan and its intended use of net proceeds from an offering to be registered. The description of the issuer's business plan and use of net proceeds must enable offerees to know with reasonable certainty what types of business or industry the issuer will be engaged in, the types of products or services the issuer will manufacture, sell, or provide, and the identity and experience of the principal managers of the business to be acquired or developed.

(c) An offering of securities by a development stage company that commits less than seventy-five percent (75%) of the net proceeds of an offering for use in a specific business to be acquired or developed shall be considered a blank-check offering. The Ccommissioner shall deem the registration statement of a blank-check offering to be one that omits to state a necessary material fact under T.C.A. §48-1-121(a)(2) and the blank--check offering itself as one that would work, or tend to work, a fraud on purchasers, and may take any action authorized by law, including but not limited to the issuance of an order pursuant to T.C.A. §§48-1-108 and 48-1-116 denying, suspending, or revoking registration or the use of any exemption, which order may name the issuer, its controlling persons, and any underwriter or seller of the securities.

(d) For purposes of this subparagraph (6), the terms below shall have the following meanings;

1. "Development stage company" shall mean any issuer devoting substantially all of its efforts to establishing a new business and either: (Ii) planned principal

operations have not commenced; or (iiH) planned principal operations have commenced, but there has been no significant revenue therefrom.

2. "Net proceeds" shall mean the amount of offering proceeds remaining after payment of selling commissions and expenses and all other expenses paid or payable in connection with the offer and sale of securities, such as printing, legal, accounting, and filing fees.

(7) Multiple Securities Under Single Registration Statement.

Any issuer filing an initial or renewal application for registration of more than one security pursuant to a single registration statement may file:

(a) A single Form U-1 if that form is completed to clearly enumerate each security and the proposed dollar amount of each security for which the application for registration is being made; and

(b) A single check combining the filing fees payable for the securities listed on the Form U-1.

Authority: T.C.A. §§48-1-105, 48-1-106, 48-1-107, 48-1-108, 48-1-115, 48-1-116~~(a)~~, and 48-1-~~116(e)~~21.

0780-04-02-.04 ADVERTISING AND SALES LITERATURE.

(1) All advertising and sales literature of any kind to be used directly or indirectly in connection with the offer or sale of securities registered or subject to registration in this state, whether through written, radio, or television medium, except advertising and sales literature described in SEC Rule 134 (17 C.F.R. §230.134), shall be filed with the Division prior to the proposed use date or circulation date.

(2) For purposes of this rRule, the term "advertising and sales literature" shall be deemed to include any communication distributed or made available to prospective investors or the public by any person to offer to sell or to induce the sale of securities other than a prospectus, a preliminary prospectus, or any prospectus supplements that have been filed with the Division as part of an application for registration. The sales material shall present a balanced discussion of both risk and reward. The contents of advertising and sales literature shall be consistent with representations in the prospectus.

(3) No advertising or sales literature of any kind shall contain:

(a) Any untrue statement of material fact or any omission to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(b) Any statement or implication that the securities offered are without risk, that returns are assured, or that failure or loss of the investment is not possible.

(4) All advertising or sales literature of any kind used in connection with offerings registered or to be registered shall contain:

(a) The name of the issuer and of the person circulating or publishing the same.

(b) A statement showing the relationship between the issuer or dealer and every person whose name is used or from whom quotations are made.

(c) A statement clearly indicating the source and authority of all reports, statements, or claims used in whole or in part or in any manner referred to therein.

(d) 1. Substantially the following legend:

"THIS IS NEITHER AN OFFER TO SELL NOR A SOLICITATION OF AN OFFER TO BUY THE SECURITIES DESCRIBED HEREIN. AN OFFERING IS MADE ONLY BY THE PROSPECTUS".

2. If printed, the legend shall appear on the face of the advertising or sales literature in type as large as that used generally in the body thereof.

(5) Oral statements made by salesmen or other persons in connection with the purchase or sale of a security registered or to be registered supplementing, interpreting, or explaining any advertising or sales literature or made in connection with sales meetings or seminars shall be consistent with representations in the prospectus.

(6) The Ccommissioner may notify the filer in writing if he/she determines that the advertising and sales literature submitted in accordance with paragraph (1) of this rRule fails to conform with the provisions of this rRule, or the Act, or has been otherwise determined to be unfair or deceptive. Such notice shall specify the reason(s) for the Ccommissioner's determination and shall afford the filer a right to a hearing in compliance with the UAPA~~Tennessee Uniform Administrative Procedures Act, *T.C.A. §4-5-301, et seq*~~.

(7) After notice and a hearing, the Ccommissioner may order any person to cease and desist from using any advertising and sales literature that is determined to violate this cChapter.

(8) Failure of the Ccommissioner to issue a notice pursuant to paragraph (6) of this rRule shall not relieve any person of responsibility for compliance with this chapter, nor will this failure waive any right of the Ccommissioner to bring an action against a person for violation of this cChapter.

(9) The provisions of paragraphs (1) through (8) of this rRule shall not apply to advertising or sales literature of any kind meeting the requirements of SEC Rules 134 (17 C.F.R. §230.134), 156 (17 C.F.R. §230.156), and 482 (17 C.F.R. §230.482) or any successor rules relating to advertising and sales literature used in the sale of investment company shares registered pursuant to the Investment Company Act ~~of 1940~~, unless such advertising or sales literature is not filed with and is not subject to review by the ~~NASD~~ FINRA or the SEC.

Authority: T.C.A. §§~~48-1-105~~, 48-1-106, 48-1-107, 48-1-113, 48-1-115, 48-1-116~~(a), and~~ 48-1-~~116~~121~~(a)~~, 17 C.F.R. §230.134, 17 C.F.R. §230.156, and 17 C.F.R. §230.482.

0780-04-02-.05 RENEWALS.

Registration statements are effective for a period of one (1) year ~~(1)~~ from the date of effectiveness and may be renewed, unless a more specific rule regulating a certain type of security states to the contrary, for additional periods of one (1) year by filing an application for registration by qualification not later than twenty (20) days prior to the expiration of effectiveness, to include the following:

(1) A completed Form U-1 designating that the application is being made pursuant to T.C.A. §48-1-106, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate, unless the Division specifically requests that such exhibits be filed;

(2) One (1) copy of the most recent prospectus;

(3) One (1) copy of each statement of additional information or supplement to the most recent prospectus, if any;

(4) If the issuer has changed its name since the most recent prior filing, a completed Form U-2, unless such form reflecting the amended name change has been previously filed with the Division; and

(5) The appropriate filing fee computed in accordance with T.C.A. §48-1-107(b).

Authority: T.C.A. §§48-1-106, 48-1-107, 48-1-115, ~~and~~ 48-1-116~~(a)~~, and Public Acts of 2001, Chapter 61.

0780-04-02-.06 STANDARDS OF FAIRNESS AND REASONABLENESS.

(1) General Rule.

All securities covered by this ~~r~~Rule shall be offered upon such terms and conditions that the potential rewards to the investors and to the promoter or issuer of the securities bear a reasonable relation to the risks assumed by each.

(2) Applicability.

(a) Unless different criteria for a specific type of security are set forth elsewhere in these R~~r~~ules, this ~~r~~Rules shall apply to:

1. All offerings filed for registration in this state pursuant to T.C.A. §48-1-105, except as provided in paragraph (3) of R~~r~~ule 0780-04-02-.01~~(3)~~; and

2. All offerings filed for registration in this state pursuant to T.C.A. §48-1-106.

(b) With respect to offerings registered by coordination or by qualification, if there is any conflict between the disclosure or accounting requirements of this ~~r~~Rule and those of the SEC, the Division may accept compliance with the SEC requirements in lieu of compliance with this ~~r~~Rule.

(3) Variances.

The standards set forth in this ~~r~~Rule are intended to furnish guidelines for the determination that an application for registration meets the requirement of paragraph (1) ~~above~~of this Rule. These standards are not meant to preclude the application of more liberal or more stringent standards if the circumstances of a particular application for registration so justify. The Division may modify or waive any of the standards set forth in paragraph (4) of this ~~r~~Rule where good cause is shown or where the goal sought to be achieved by these guidelines can be accomplished by other means. Good cause may be shown by a demonstration of adequate alternative safeguards built into a particular offering that bring that offering within the spirit of paragraph (1) of this ~~r~~Rule.

(4) Standards.

(a) An offering which meets the applicable provisions of this paragraph (4) will be deemed to meet the standard of paragraph (1) of this ~~r~~Rule.

(b) The following definitions shall apply to this ~~r~~Rule except as expressly provided otherwise herein:

1. "Earnings Per Share" means net profits determined on a per share basis after taxes but before extraordinary items, calculated in accordance with generally accepted accounting principles consistently applied on a fully diluted basis.

2. "Equity Investment of Promoters" means the total of all cash, together with the reasonable value of all assets contributed to the issuer as determined by qualified independent appraisals acceptable to the Aassistant Ccommissioner, and may be adjusted by the earned surplus or deficit of the issuer subsequent to the dates of contribution.

3. "Equity Security" means any common stock or similar security; or any instrument convertible, with or without consideration, into such a security, or carrying a warrant, option, or right to subscribe to or purchase such a security; or any such warrant, option, or right.

4. "Firm Market" means a market in which quoted prices are those at which a security can actually be bought and sold currently, and are not quotes that are merely based on historical prices.

5. "Person" means any individual, corporation, partnership, trust, or other legal entity, or any unincorporated association or organization, and includes the following: (i) any relative, spouse, or relative of the spouse of the specified person; (ii) any trust or estate in which the specified person or any of the persons specified in (i) collectively own five percent (5%) or more of the total beneficial interest or of which any of such persons serve as trustee, executor, or in any similar capacity; and (iii) any corporation or other organization (other than the issuer corporation) in which the specified person or any of the persons specified in (i) are the beneficial owners collectively of five percent (5%) or more of any class of equity securities or five percent (5%) or more of the equity interest.

6. "Promoter" means: (i) any person who, acting alone or in conjunction with one (1) or more persons's, directly or indirectly, takes the initiative in founding and organizing the business or enterprise of a corporation; (ii) any person who, in connection with the founding or organizing of the business or enterprise of a corporation, directly or indirectly, receives in consideration of services or property or both services and property five percent (5%) or more of any class of equity security of the corporation or five percent (5%) or more of the proceeds from the sale of any class of equity security of the corporation; provided, however, that a person who receives such securities or proceeds solely as underwriting commissions shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; (iii) any person who is an officer, director, or who beneficially owns, directly or indirectly, more than five percent (5%) of any class of equity security of a corporation, excluding any unaffiliated institutional investor that purchased its shares more than two (2) years prior to the filing date of the proposed offering; and (iv) any person who is an affiliate of a person specified under clause (i), (ii), or (iii), of this part 6.

7. "Promotional or Development Stage Corporation" means a corporation which has no public market for its shares and has no significant earnings. All other corporations shall be deemed "Seasoned Corporations".

8. "Promotional Shares" means those equity securities which were issued within three (3) years prior to the filing date or are to be issued to promoters for a consideration valued at less than eighty-five percent (85%) of the proposed public offering price excluding the number of such securities calculated by

dividing eighty-five percent (85%) of the public offering price per share into the total consideration paid by promoters for their shares. Equity securities which were, or are to be, issued for services rendered, patents, copyrights, or other intangibles are presumed to be promotional shares unless the value of such intangibles has been established to the satisfaction of the Division. In determining the consideration paid or the value of property under this definition, the Division may recognize as consideration any property, including patents, copyrights, or other intangibles (except goodwill) to the extent that the fair market value of such assets is established to the Division's satisfaction. Consideration for equity securities may include the fair market value of such assets if the fair market value can be determined by an independent appraisal (according to recognized standards of valuation) that is acceptable to the Division and may also include verifiable out-of-pocket development or marketing expenses (excluding promoters' salaries) paid by promoters to the extent such expenses are not reimbursed by the issuer. Excluded from this definition shall be any shares issued to promoters at the same price paid by unaffiliated persons in offerings made pursuant to SEC Regulation D.

EXAMPLE: Calculations of number of promotional shares.

	# of shares	Total Price Paid Per Share
Shares Held by Promoters	100	$1.00
Public Offering Price Per Share		$10.00
Total Paid by Promoters		$100.00
Public Offering Price Per Share x .85		$10x.85
Fully Paid Shares		$100.00
		$8.50 = 11.77*
Shares Held by Promoters	100	
- Fully Paid Shares	-12*	
Number of Promotional Shares	88	

*Rounded

9. "Public Market" means, with respect to the equity securities of an issuer, that one of the following criteria is met:

   (i) The security is traded on a national or regional stock exchange registered under the ~~Securities Exchange Act of~~ 1934 Act;

   (ii) The security is designated on the Nasdaq National Market; or

   (iii) Each of the following criteria is met:

(I) There were at least three hundred (300) holders of the security at the beginning and end of the six (6) th-month period preceding the date of the filing;

(II) At least two hundred thousand (200,000) shares of the security are publicly outstanding (exclusive of securities held by officers, directors, and five percent (5%) holders);

(III) At least two (2) broker-dealers regularly make a market in the security;

(IV) At least one (1) financial publication regularly quotes the market price;

(V) Trading of the security in the six (6) -month period preceding the date of the filing averaged at least one hundred (100) transactions or at least five percent (5%) of the outstanding securities (not including securities held by officers, directors, and five percent (5%) security holders) per month; and

(VI) The bid price and the asking price represent quotations in a firm market.

10. "Significant Earnings" shall be deemed to exist if the corporation's earnings record over the last five (5) years (or such shorter period of the corporation's existence, but in no event less than three (3) years) demonstrates that it would have met either of the earnings tests set forth in items (4)(f)4.(i)(I) and (II) of this rRule based upon its shares outstanding immediately before the proposed public offering.

11. "Unaffiliated Institutional Investor" includes any unaffiliated: bank; investment company registered under the Investment Company Act of 1940 or a business development company as defined in sSection 2(a)(48) of the Investment Company Act of 1940; small business investment company licensed by the U.S. Small Business Administration under sSection 301 of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974; insurance company; private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which owns less than twenty percent (20%) of the securities to be outstanding at the completion of the proposed public offering.

(c) Options and Warrants.

The amounts and kinds of options and warrants to purchase securities issued or sold, other than ratably in connection with a proposed offering of equity securities or securities convertible into equity securities, shall be reasonable. The amounts and kinds of options and warrants are presumed to be reasonable if they satisfy the following conditions:

1. With respect to options or warrants to underwriters:

(i) The options or warrants are issued to the managing underwriters under a firm commitment underwriting agreement only after the entire issue has been sold, provided that the options and warrants are not assignable or

transferable except among or to the partners, or officers and directors of the managing underwriters;

(ii) The exercise price of the options or warrants is at least equal to the public offering price with a step-up of the exercise price of either seven percent (7%) each year such options and warrants are outstanding, or in the alternative, an over-all twenty percent (20%) step-up at any time after one (1) year from the date of issuance. The step-up shall commence twelve (12) months after the grant of the options or warrants. The election as to either step-up alternative must be made by the underwriters at the time that the options or warrants are issued;

(iii) The options or warrants are issued by a relatively small company other than a seasoned issuer with a public market, or where it appears from all of the facts and circumstances that the issuance of options or warrants is necessary to obtain competent investment banking services, provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be in the absence of such options and warrants;

(iv) The securities covered by the options and warrants consist solely of securities of the same class and of the same issuer as those securities proposed to be sold to the public in the offering under consideration;

(v) The number of shares covered by all options or warrants does not exceed twelve percent (12%) of the securities proposed to be sold to the public in the offering under consideration;

(vi) The options or warrants do not exceed five (5) years in duration and are exercisable no sooner than one (1) year after issuance; and

(vii) The value of the options or warrants shall be included in the computation of underwriting commissions and discounts. The market value of such options or warrants, if any, shall be used, and where no market value exists, a presumed fair value of not less than twenty percent (20%) of the public offering price of the stock to which the options or warrants relate shall be used, unless evidence indicates that a different value exists.

2. With respect to options or warrants issued to persons other than underwriters in connection with financing arrangements made by the issuer, the options or warrants are issued as a result of bona fide negotiations between the issuer and persons not affiliated with the issuer, and upon terms and conditions which are reasonable in light of the proposed public offering.

3. The total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding those issued in connection with acquisitions, does not exceed either twelve percent (12%) of the shares to be outstanding upon completion of the offering or twelve percent (12%) of the shares outstanding during the twelve (12) month period commencing with the effective date of the registration. The number of options and warrants issued or reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective with the Division.

4. All options and warrants except those issued to financing institutions other than underwriters shall be issued at not less than eighty-five percent (85%) of fair

market value on the date of issuance, or where no market exists, at not less ~~that~~ than eighty-five percent (85%) of book value on the date of issuance, and the exercise price shall not be subject to change by the issuer except in accordance with anti-dilution provisions in effect on the date of issuance.

(d) Offering Price.

1. The offering price of equity securities of seasoned corporations may be deemed unfair to the purchasers unless at least one (1) of the following conditions is met:

   (i) The price for the equity security does not exceed thirty-three (33) times the issuer's net earnings per share for the last twelve (12) months, or does not exceed thirty-three (33) times its average annual net earnings per share for the last three (3) years prior to the proposed offering date;

   (ii) The price of the equity security is based on a public market; or

   (iii) If there is no public market, the issuer may show that the proposed price-earnings ratio is justified in relation to price earnings ratios of comparable companies by means of published industry guides that include key business ratios. Comparable companies shall mean companies similar in terms of size, history of operations, industry and products, and other relevant factors. Key business ratios include but are not limited to liquidity ratios, activity ratios, leverage ratios, profitability ratios, and common stock ratios.

2. The offering price of equity securities of promotional or development stage corporations shall be reasonably related to the price paid for the stock by promoters or controlling persons of the issuer except as permitted by subparagraph (4)(f) of this ~~r~~Rule regarding promotional shares. Facts and circumstances to be considered shall include, but are not limited to, the following: the price paid for the equity securities by promoters or controlling persons of the issuer in transactions effected within three (3) years prior to the public offering; the book value of the equity security; the market value of the corporation's assets; and the sophistication of the proposed purchasers.

(e) Selling Commissions and Expenses.

1. The aggregate amount of underwriters' and sellers' discounts, commissions, and other compensation shall be reasonable. Such compensation is presumed reasonable if the total of all underwriters' or sellers' compensation and other expenses in connection with the offering does not exceed fifteen percent (15%) of the gross proceeds of the offering, except that in the case of securities which qualify for registration on Forms S-B1 or S-B2 under the ~~Securities Act of~~ 1933 Act or which qualify for exemption pursuant to Regulation A under the ~~Securities Act of~~ 1933 Act, the total underwriters' and sellers' compensation and all other expenses will be presumed reasonable if not in excess of twenty percent (20%) of the gross proceeds of the offering. See also subpart (4)(c)1.(vii) of this ~~r~~Rule.

2. Compensation to be received by underwriters or sellers shall include, but is not limited to, the following:

   (i) Underwriter's discounts, commissions, or concessions;

   (ii) Non-accountable expense allowances;

(iii) Expenses incurred by an underwriter or related person payable by the issuer or from the proceeds of the offering to or on behalf of an underwriter or related person;

(iv) Finder's fees known to be payable at the commencement of the offering;

(v) Wholesaler's fees;

(vi) Financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value which are connected with or related to the offering unless an ongoing financial consulting or advisory relationship between the proposed issuer or affiliate and the proposed underwriter or related person has been established at least twelve (12) months prior to the filing of the registration statement;

(vii) Stock, options, warrants, and other securities, the options and warrants to be valued in accordance with subpart (4)(c)1.(vii) ~~above~~of this Rule;

(viii) Special sales incentive items;

(ix) A right provided to an underwriter or related person to require the issuer upon demand to register securities on behalf of the underwriter or person in the future at the expense of the issuer, which shall be valued at one percent (1%) of the gross proceeds of the offering, unless the demand is for only one (1) such registration in which event the right to demand registration shall be valued at one-half of one percent (.5%) of the gross proceeds of the offering; provided, however, that a right to "piggyback" on a non-demand registration shall be valued at one-quarter of one percent (.25%) of the gross proceeds of the offering unless the underwriter agrees to pay its pro rata share of offering expenses incurred as a result of such securities being included in the offering;

(x) Commissions, expense reimbursements, or other compensation to be received by an underwriter or related person as a result of the exercise of the conversion within twelve (12) months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering; and

(xi) If promotional shares are issued to an underwriter, the difference between the consideration paid and the public offering price shall be considered compensation to the underwriters.

3. All underwriter compensation set forth in part (4)(e)2. ~~above~~. of this Rule, when added to all other marketing expenses, such as printing costs, registration fees, filing fees, issuer's attorneys and accounting fees, fees and expenses of underwriters' counsel, accountable expense allowances paid to underwriters, and miscellaneous marketing expenses, shall not exceed the limit imposed in part (4)(e)1. of this Rule ~~above~~.

4. If the securities are sold under a deferred or installment plan, the underwriters' or sellers' commissions payable in cash shall be payable pro rata over the life of the plan.

5. In the case of the sale to the public of outstanding securities held by existing security holders to be sold alone or in conjunction with the sale of securities by

the issuer, the selling security holders shall pay, as the case may be, all of their equitable portion of the selling commissions and expenses.

(f) Promotional Shares.

1. Maximum Amount of Promotional Shares. If the maximum amount of promotional shares exceeds thirty-three percent (33%) of the outstanding shares of stock of the issuer after the completion of the offering, the promotional shares will be subject to part (4)(f)3. of this Rule. below.

2. Mergers, Recapitalizations, Reorganizations, and Stock Splits.

(i) If the maximum amount of dilution to public investors exceeds seventy-five percent (75%) of the public offering price after the completion of the offering, the promotional shares will be subject to part (4)(f)3., of this Rule below; and

(ii) Even if the amount of dilution to public investors does not exceed seventy-five percent (75%) of the public offering price after the completion of the offering, all shares owned by officers, directors, and parties owning five percent (5%) or more of the outstanding shares of the corporation before the public offering that cause dilution in excess of forty percent (40%) of the public offering price after the completion of the offering shall be subject to escrow pursuant to part (4)(f)3. of this Rule.

3. Escrow of Promotional Shares. The Aassistant Ccommissioner may require as a condition of registration that all or part of any promotional shares be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors.

4. Release Provisions.

(i) Promotional shares which are to be escrowed shall remain in escrow until the sixth anniversary of the effective date of the registration. On the sixth, seventh, eighth, and ninth anniversary dates, twenty-five percent (25%) of each promoter's shares shall be released fromform escrow. Shares may also be released from escrow upon the achievement by the issuer of any of the following tests during the escrow period:

(I) After two (2) consecutive fiscal years fromform the date of effectiveness, during which the issuer has minimum average annual earnings per share equal to six percent (6%) of the public offering price.

(II) After five (5) fiscal years from the date of effectiveness, the average earnings per share are equal to five percent (5%) or more of the public offering price.

(III) After one (1) year, for a term of at least ninety (90) consecutive trading days following such one (1) -year period, and for the thirty (30) trading days prior to the requested termination date of the escrow, the shares of the issuer are trading in a reliable public market at a price at least one-hundred seventy-five percent (175%) of the initial public offering price.

(ii) A request for termination of an escrow based on satisfaction of either of the tests set forth in items (4)(f)4.(i) ~~(I) and (II) above~~ of this Rule shall be accompanied by an earnings per share calculation audited and reported on by an independent certified public accountant.

5. Terms of Escrow.

(i) The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings without the consent of the ~~A~~assistant ~~C~~commissioner, but in all such cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate; otherwise, the escrowed shares may not be pledged to secure a debt. The securities in escrow may be transferred by gift to family members, provided that the shares remain subject to the terms of the escrow agreement.

(ii) The shares required to be held in escrow as a condition to registration of a public offering shall not have any right, title, interest, or participation in the assets of the issuer in the event of dissolution, liquidation, merger, consolidation, reorganization, sales of assets, exchange, or any other transaction or proceeding which contemplates or results in the distribution of the assets of the issuer, until the holders of all shares not escrowed have received, or had irrevocably set aside for them, an amount equal to the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the holders of the escrowed shares shall be entitled to receive an amount per share equal to the amount received by or set aside for the holders of the non-escrowed shares, on a per share basis, plus any dividends and interest set aside for the escrowed shares, to the extent any such cash dividends plus interest are not necessary to meet the issuer's obligation of payment to holders of shares not escrowed, and thereafter all shares shall participate on a pro rata basis. However, a merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.

(iii) Shares held in escrow shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets available for distribution as provided under subpart (4)(f)5.(ii) of this Rule. The escrow agent shall place any cash dividends in an interest bearing account. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from escrow. All certificates representing stock dividends and shares resulting from stock splits of escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.

(iv) A summary of the terms of the escrow shall be included in the prospectus and, during the term of the escrow agreement and until the release of all shares from escrow, in subsequent prospectuses, annual reports to shareholders, proxy statements, or other disclosure materials used by shareholders or investors in making decisions with respect to the issuer.

(v) The escrow agent must be satisfactory to the ~~A~~assistant ~~C~~commissioner and may not be affiliated with any promoter of the ~~corporation~~issuer. The ~~corporation~~ issuer shall not bear any of the fees or expenses associated with the escrow.

(g) Promoters' Investment. The offering of an issuer that is a promotional or development stage corporation shall be presumed unfair unless the equity investment of the promoters equals at least ten percent (10%) of the tangible net worth of the issuer adjusted for the proposed offering.

(h) Alternative Guidelines for Promotional Shares and Promoters' Investment:

1. In lieu of the guidelines set forth above in part (4)(d)2. and subparagraphs ~~(d)(2)., (f) and (g),~~(4)(f-g) of this Rule, an issuer may comply with the standards of this subparagraph (4)(h).

2. An offering of equity securities of a promotional or a development stage corporation may be deemed to be unfair if the ratio of equity capital to equity ownership of the public investors buying pursuant to the proposed offering on a per share basis is more than ten (10) times the ratio of the equity capital to equity ownership of promoters, on a per share basis. For purposes of this ~~sub~~part:

(i) With respect to public investors, "equity capital" shall mean the tangible consideration paid by the public investors.

(ii) With respect to promoters, "equity capital" shall mean the greater of the tangible consideration contributed to the equity of the issuer on a fully diluted basis, or the net worth of the issuer demonstrated by the most recent audited balance sheet furnished by the issuer in the registration statement and all interim unaudited balance sheets.

(iii) With respect to promoters, "equity ownership" shall mean the total number of shares owned on a fully diluted basis.

(iv) With respect to public investors, "equity ownership" shall mean the total number of shares to be offered to the public.

EXAMPLE: Calculation of the Ratio of Equity Capital to Equity Ownership on a Per Share Basis. (The example assumes that there are no outstanding options, warrants, or convertible securities.)

	Total # of Shares	*Issuer's Net Worth*	*Proposed Price Per Share*	*Total Tangible Consideration*
Promoters'	880,000	$500,000		$300, 000
Public Investors'	200,000		$10.00	$2,000,000

Totals	1,080,000	$500,000	$2,300,000

Public Investor's Equity Capital / Equity Ownership = $2,000,000 / 200,000 == $10.00

Promoters' Equity Capital / Equity Ownership = $300,000 / 880,000 == .34090; .34 x 10 = $3.40

Promoters' Net Worth / Equity Ownership = $500,000 / 880,000 == .56818; .57 x 10 = $5.70

CONCLUSION : THE ALTERNATIVE TEST IS NOT MET.
$10.00>$3.40 OR 5.70

(i) Voting Rights.

1. Unless either preferential treatment as to dividends and liquidation is provided with respect to the publicly offered securities or a public market exists for the securities, the offering of equity securities of an issuer having more than one class of equity securities outstanding will be deemed unfair to public investors if the class of equity securities offered to the public has no voting rights or less than equal voting rights in proportion to the number of shares of each class outstanding in all matters, including the election of members to the board of directors of the issuers.

2. If at the time of a proposed offering the issuer has authorized preferred stock issued or issuable with rights, preferences, or privileges to be determined by the issuer's board of directors without further action by stockholders, the offering document shall include a disclosure to the effect that a subsequent determination by the board of directors with respect to the rights, preferences, or privileges of the preferred stock may adversely affect the rights of common stockholders.

(j) Preferred Stock and Debt Securities.

1. The net earnings of the issuer for its last fiscal year prior to the offering or for the average of its last three (3) fiscal years prior to the offering must be sufficient to cover adequately the dividends and redemption requirements, if any, on the preferred stock proposed to be offered. Net earnings shall be determined exclusive of non-recurring items and shall be adjusted for any debt securities or preferred stock to be redeemed with the proceeds of the offering, less applicable income tax effects.

2. The net earnings of the issuer for its last fiscal year prior to the offering, or for the average of its last three (3) fiscal years prior to the offering, must be sufficient to cover adequately its debt service requirements on all debt securities issued subsequent to its last fiscal year (including all securities proposed to be offered). Net earnings shall be determined before taxes, depreciation, and extraordinary items and shall be adjusted for any debt securities to be redeemed with the proceeds of the offering and for applicable tax effects.

3. Upon completion of the offering, the total amount of debt of the issuer must be reasonable in proportion to the amount of equity of the issuer. Reasonableness is to be determined in relation ~~of~~ to the prevailing debt-equity ratios for comparable companies in the issuer's~~s~~ industry.

4. If the issuer has made or proposes to make any material acquisitions subsequent to the last year specified in parts (4)(ij)1.-3. of this Rule, the earnings for each year shall be restated on a pro-forma basis to reflect such acquisition.

5. The sale of preferred stock or debt securities by promotional or development stage corporations is presumed not to meet the standard in paragraph (1) of this ~~r~~Rule unless a variance is granted pursuant to paragraph (3) of this ~~r~~Rule.

6. The issuer may not bind itself to purchase debt securities or preferred stock at the request of the holder prior to maturity except pursuant to sinking fund provisions or pursuant to some other reasonable method fully disclosed in the prospectus.

(k) Loans to Company Officials.

1. The sale of securities by an issuer may be deemed unfair if the issuer or its affiliates have made, or may make, loans or forbearances to company officers, directors, or controlling persons, other than as described below:

   (i) Advances for travel, business expense, relocation, and similar ordinary operating expenditures.

   (ii) Any other loans or forbearances for specific purposes directly related to the ordinary course of the issuer's business, or for bona fide personal emergencies, provided the loans or forbearances are approved by a majority of disinterested members of the issuer's board of directors.

   (iii) Any other loans or forbearances approved by a majority of disinterested shareholders (excluding all company officials and controlling persons) pursuant to a proxy solicitation conforming to the ~~Securities and Exchange Commission's~~ proxy rules set by the SEC.

   (iv) An issuer or affiliate whose primary business is that of making loans may make loans to the officers, directors, or controlling persons of the issuer or affiliate provided that the loans:

      (I) Will be evidenced by a promissory note naming the lender as payee, and contain an annual percentage rate which is reasonably comparable to that normally charged to non-affiliates by other commercial lenders for similar loans made in the lender's locale;

      (II) Will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by

other commercial lenders for similar loans made to non-affiliates in the lender's locale;~~.~~

(III) Will be made only if credit reports and financial statements, or other reasonable investigation appropriate in the light of the nature and terms of the loan and which meet the loan policies normally used by other commercial lenders for similar loans made to non-affiliates in the lender's locale show the loan to be collectible and the borrower a satisfactory credit risk; and

(IV) The purpose of the loan and the disbursement of proceeds are reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale.

2. All loans except those described in part (4)(k)1. ~~above~~ of this Rule shall be repaid in full prior to the offering. The Division may waive this requirement if:

(i) The issuer is a going concern and repayment of such loan will be made pursuant to appropriate amortization schedules; or

(ii) Any portion of the offering is, by, or on behalf of any company official to whom a loan or forbearance has been made, and such person undertakes to effect repayment from the proceeds of the offering and repayment to the extent of such proceeds will be made immediately upon completion of the offering.

3. If the issuer or its affiliates has or will make loans or forbearances to officers, directors, or controlling persons, the prospectus or offering circular shall disclose the terms and details of the loans or forbearances.

(l) Impoundment of Proceeds. The Division may require that as a condition to registration that all proceeds of sales of securities be impounded in escrow until such time that a sufficient amount has been realized to accomplish the purpose of the offering.

(m) Future Self-Dealing Transactions. The prospectus shall contain a statement to the effect that all future transactions with affiliates of the issuer are to be on terms no less favorable than could be obtained from an unaffiliated third party and must be approved by a majority of the directors including the majority of disinterested directors.

(n) Standards for Specific Issuers.

1. Applicability.

(i) The Statements of Policy referred to in this subparagraph (4)(n) apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms. Deviations from these guidelines may be permitted by the Division where good cause is shown in accordance with paragraph (3) of this ~~r~~Rule.

(ii) The Division may grant effectiveness to any offering that is subject to review under guidelines below on a basis other than that permitted in such guidelines where the offering requires each investor in this state (including transferees) to have a minimum net worth of a least two hundred fifty thousand dollars ($250,000) exclusive of home, home furnishings, and automobiles and to have had during the last tax year, and be expected to

have during the current tax year a gross income of at least sixty-five thousand dollars ($65,000) or, in the alternative, a minimum net worth of at least five hundred thousand dollars ($500,000) exclusive of home, home furnishings, and automobiles. In the case of such offerings, the Division may require a statement signed by each investor in this state acknowledging how the offering varies from the standards set forth in the guidelines below.

(iii) The term "Administrator" as used in these guidelines shall mean the Aassistant Ccommissioner.

(iv) Copies of these guidelines may be obtained from the Division upon request and payment in advance of a reasonable charge for copying.

2. Cattle-Feeding Programs.

The sStatement of pPolicy on Registration of Publicly Offered Cattle-Feeding Programs adopted by NASAA, as reported at CCH NASAA Reports ¶paragraph 601, of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

3. Church Bonds.

The Statement of Policy on Church Bonds adopted by NASAA, as reported at paragraph 1001 of CCH NASAA Reports ¶1001, as it may be amended from time to time, is incorporated herein by reference.

4. Commodity Pool Programs.

The Statement of Policy on Registration of Commodity Pool Programs adopted by NASAA, as reported at paragraph 1201 of CCH NASAA Reports ¶1201, as it may be amended from time to time, is incorporated herein by reference.

5. Equipment Programs.

The Statement of Policy on Registration of Equipment Programs adopted by NASAA, as reported at paragraph 1601 of CCH NASAA Reports ¶1601, as it may be amended from time to time, is incorporated herein by reference.

6. Finance Company Debt Securities.

The Statement of Policy on Finance Company Debt Securities adopted by the Central Securities Administrators Council, as reported at paragraph 5431, CCH Blue Sky Law Reporters ¶5431, as it may be amended from time to time, is incorporated herein by reference.

7. Health Care Facility Offerings.

The Statement of Policy on Health Care Facility Offerings adopted by NASAA, as reported at paragraph 2001 of CCH NASAA Reports ¶2001, as it may be amended from time to time, is incorporated herein by reference.

8. Oil and Gas Programs.

The Statement of Policy on Registration of Oil and Gas Programs adopted by NASAA, as reported at ~~paragraph 2601 of~~ CCH NASAA Reports ¶2621, as it may be amended from time to time, is incorporated herein by reference.

9. Real Estate Investment Trusts.

The Statement of Policy on Real Estate Investment Trusts adopted by NASAA, as reported at ~~paragraph 3401 of~~ CCH NASAA Reports ¶3401, as it may be amended from time to time, is incorporated herein by reference.

10. Real Estate Programs.

The Statement of Policy on Real Estate Programs adopted by NASAA, as reported at ~~paragraph 3601 of~~ CCH NASAA Reports ¶3601, as it may be amended from time to time, is incorporated herein by reference.

11. Miscellaneous Direct Participation Programs.

In order to provide consistency in its review, the Division will use, to the extent appropriate, the NASAA Statement of Policy on Real Estate Programs, and particularly Sections II, III, and V through IX, as a reference in determining whether types of direct participation programs other than those specifically referenced in parts (4)(n)1. ~~through~~ 10. ~~above~~ of this Rule meet the standard set forth in ~~sub~~paragraph (1) of this ~~r~~Rule.

12. Religious Denominations.

The Guidelines for General Obligation Financing by Religious Denominations adopted by NASAA, as reported at ~~paragraph 1951 of~~ CCH NASAA Reports ¶¶1951-1957, as it may be amended from time to time, is incorporated herein by reference.

(5) Coordinated Review - Equity.

(a) An offering of equity securities which is submitted pursuant to a coordinated review process agreed to by the Division and other states, will be deemed to meet the standard of paragraph (1) of this ~~r~~Rule if it meets all of the terms and conditions of such coordinated review process, as well as meets the following guidelines:

1. The Statement of Policy ~~on~~ Regarding Corporate Securities Definitions adopted by NASAA, as reported at ~~paragraph 3811 of~~ CCH NASAA Reports ¶3811 et seq., as it may be amended from time to time, is incorporated herein by reference.

2. The Statement of Policy ~~on~~ Regarding the Impoundment of Proceeds adopted by NASAA, as reported at ~~paragraph 2151 of~~ CCH NASAA Reports ¶2151, as it may be amended from time to time, is incorporated herein by reference.

3. The Statement of Policy ~~on~~Regarding Loans and Other Affiliated Transactions adopted by NASAA, as reported at ~~paragraph 371 of~~ CCH NASAA Reports ¶371, as it may be amended from time to time, is incorporated herein by reference.

4. The Statement of Policy ~~on~~ Regarding Options and Warrants adopted by NASAA, as reported at ~~paragraph 2801 of~~ CCH NASAA Reports ¶2801, as it may be amended from time to time, is incorporated herein by reference.

5. The Statement of Policy ~~on~~ Regarding Preferred Stock adopted by NASAA, as reported at ~~paragraph 3001 of~~ CCH NASAA Reports ¶3001, as it may be amended from time to time, is incorporated herein by reference.

6. The Statement of Policy ~~on~~ Regarding Promoters Equity Investment adopted by NASAA, as reported at ~~paragraph 3101 of~~ CCH NASAA Reports ¶3101, as it may be amended from time to time, is incorporated herein by reference.

7. The Statement of Policy ~~on~~ Regarding Promotional Shares adopted by NASAA, as reported at ~~paragraph 3201 of~~ CCH NASAA Reports ¶3201, as it may be amended from time to time, is incorporated herein by reference.

8. The Statement of Policy ~~on~~ Regarding Specificity in Use of Proceeds adopted by NASAA, as reported at ~~paragraph 3831 of~~ CCH NASAA Reports ¶¶3831-3837, as it may be amended from time to time, is incorporated herein by reference.

9. The Statement of Policy ~~on~~ Regarding Underwriting Expenses and Underwriter's Warrants, Selling Expenses, and Selling Security Holders adopted by NASAA, as reported at ~~paragraph 3671 of~~ CCH NASAA Reports ¶¶3813-3820, as it may be amended from time to time, is incorporated herein by reference.

10. The Statement of Policy ~~on~~ Regarding Unsound Financial Condition adopted by NASAA, as reported ~~at paragraph 3821 of~~ CCH NASAA Reports ¶¶3821-3827, as it may be amended from time to time, is incorporated herein by reference.

11. The Statement of Policy ~~on~~ Regarding Unequal Voting Rights adopted by NASAA, as reported at ~~paragraph 2401 of~~ CCH NASAA Reports ¶2401, as it may be amended from time to time, is incorporated herein by reference.

12. The Statements of Policy referenced in subparagraph (4)(n) of this ~~r~~Rule will apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms.

(b) Copies of these guidelines and terms and conditions of the coordinated review process may be obtained from the Division upon request and payment in advance of a reasonable charge for copying.

Authority: T.C.A. §§48-1-105, 48-1-106, 48-1-107, 48-1-115, ~~and~~ 48-1-116~~(a)~~, §2(a)(48) of the Investment Company Act of 1940, §301 of the Small Business Investment Act of 1958, Employee Retirement Income Security Act of 1974, Title I, and §202(a)(22) of the Investment Advisers Act of 1940.

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

(1) All~~-~~ persons offering securities claimed to be exempt under T.C.A. §48-1-103(a)(7) shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:

(a) A statement of the basis for the issuer's qualification for the exemption under T.C.A. §48-1-103(a)(7)~~.~~;

(b) An undertaking to notify the ~~C~~commissioner immediately upon the receipt of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, or similar order entered by or issued by any regulatory authority or by any court, concerning the securities covered by the notice or other securities of the issuer currently being offered to the public~~;~~ and

(c) A statement of whether or not the issuer has ever been the subject of any order described in subparagraph (1)(b) ~~above~~of this Rule.

(2) The issuer shall furnish at a minimum the following information to offerees:

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

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

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

(c) If the issuer is other than as described in subparagraphs (1)(a-b) ~~and (b) above~~of this Rule, the disclosure document must contain:

1. Financial statements of the issuer prepared in accordance with generally accepted accounting principles including, but not limited to, the following:

(i) A balance sheet as of the end of the most recent fiscal year of the issuer; and

(ii) A statement of income for each of the issuer's three (3) most recent fiscal years.

2. A statement from the issuer setting forth the issuer's plan for paying the principal and interest due on the securities to be sold, including, but not limited to, anticipated sources of revenue to be used in paying such principal and interest, and supporting financial information; and

3. A statement as to whether or not the issuer or any affiliate or predecessor has had any material default during the past ten (10) years in the payment of:

(i) pPrincipal, interest, dividends, or sinking fund installments on any security or indebtedness for borrowed money; or

(ii) ~~r~~Rentals under material leases with terms of three (3) years or more.

(d) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters and, if printed, in boldface roman type at least as high as ten (10) point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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

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

0780-04-02-.08 UNIFORM LIMITED OFFERING EXEMPTION.

(1) Preliminary Notes.

(a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(b) In view of the objective of this rRule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rRule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly, stated in this rRule.

(c) Nothing in this rRule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of the law otherwise applicable to such registered persons.

(2) Exemptions. By the authority delegated to the Ccommissioner in T.C.A. §§48-1-103(b)(11) and 48-1-116, the following transactions are determined to be exempt from T.C.A. §§48-1-104 and 48-1-113.

Any sale of securities offered and sold in compliance with the Securities Act of 1933 Act, Regulation D, SEC Rule 505 (17 C.F.R. §230.505), including any offer or sale made exempt by application of SEC Rule 508(a), (17 C.F.R. §Sections 230.505 and 230.508(a)), as made effective in SEC Release No. 33-6389 and as amended in subsequent SEC releases, which satisfies the following further conditions and limitations:

(a) Commissions.

1. No commission, fee, or other remuneration shall be paid or given directly or indirectly to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.has fully complied

with the registration requirements set forth in the Act and in these Rules, and has satisfied all outstanding comments of the Division.

2. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not ~~appropriately~~ registered in ~~this state~~compliance with the registration requirements set forth in the Act and in these Rules.

(b) Disqualification. No exemption under this ~~r~~Rule shall be available for the securities of any issuer if any of the parties described in ~~Securities Act of~~the 1933, Act., Regulation A, SEC Rule 252 (c~~), (d), (e) or (f),~~ (17 C.F.R. §~~Section~~ 230.252 (c~~)(d)(e) and (f)~~):

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the notice required under this exemption.

2. Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five (5) years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgement was entered within five (5) years prior to the filing of the notice required under this exemption.

4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

5. Is currently subject to any order, judgement, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the notice required under this exemption.

6. The prohibitions of parts (2)(b)1.-3. ~~through~~ and 3. ~~and~~(2)(b)-5. ~~above~~ of this Rule shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgement was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgement, or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered.

7. Any disqualification caused by this subparagraph is automatically waived if the state securities administrator or agency of the state which created the basis for

disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

8. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subparagraph existed.

(c) Filing Requirement. The issuer shall file with the Division a notice on Form D (17 C.F.R. ~~§Section~~ 239.500):

1. No later than fifteen (15) days after the earlier of the first payment of consideration or the delivery of a signed subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption, and at such other times and in the form required under Regulation D, SEC Rule 503, (17 C.F.R. ~~§Section~~ 230.503), to be filed with the SEC~~ecurities and Exchange Commission~~. The Form D shall contain all information requested on the ~~f~~Form.

2. The notice on Form D shall be accompanied by:

(i) ~~o~~One (1) copy of all written information furnished to offerees;

(ii) ~~a~~A Form U-2 Uniform Consent to Service of Process;

(iii) ~~i~~If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(iv) ~~a~~A non-refundable filing fee in the amount of five hundred dollars ($~~300~~500); and

(v) ~~a~~A statement noting the date of the first sale, if any of such security, in this state.

3. The issuer shall promptly furnish any additional information requested by the Division.

4. Any initial notice on or amendment to the Form D shall be manually signed by a person authorized by the issuer.

(d) Amendments. Any filing pursuant to this exemption shall be amended by filing with the Division such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any written offering material required by this ~~r~~Rule that was not prepared at the time of the initial filing, or which materially differs from the written offering material included in the filing shall be delivered or mailed to the Division concurrently with its first use in this state. There shall be no fees charged for amendment to filings pursuant to this ~~r~~Rule.

(e) Suitability. In all sales to nonaccredited investors in this state the following conditions must be satisfied, or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied.

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be

presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable; and

2. The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.

(f) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters, and if printed, in boldface roman type at least as high as ten (10) -point modern type:

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

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

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

(3) A failure to comply with a term, condition, or requirement of subparagraphs (2)(a), (2)(c), and (2)(e) of this rRule will not result in the loss of the exemption from the requirements of T.C.A. §§48-1-104 and 48-1-113 for any sale to a particular purchaser if the person relying on the exemption shows:

(a) tThe failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular purchaser;

(b) tThe failure to comply was insignificant with respect to the offering as a whole; and

(c) aA good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraphs (2)(a), (2)(c), and (2)(e) of this Rule.

(4) Where an exemption is established only through reliance on paragraph (3) of this rRule, the failure to comply shall nonetheless be actionable by the Ccommissioner.

(5) Transactions which are exempt under this rRule may not be combined with transactions exempt under any other rRule or any section of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(6) The Ccommissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(7) The exemption authorized by this rRule shall be known and may be cited as the "Tennessee Uniform Limited Offering Exemption."

Authority: T.C.A. §§48-1-103(b)(11), 48-1-104, 48-1-113, 48-1-115, 48-1-116(a), and 48-1-124(e), Public Acts of 1997, Chapter 164, Section §1; §18 of the Federal Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, 17 C.F.R. §230.252, 17 C.F.R. §230.500, 17 C.F.R. §230.503, 17 C.F.R. §230.505, and 17 C.F.R. §230.508.

0780-04-02-.09 SUCCESSOR CORPORATE ISSUERS.

(1) If an issue is a corporate successor to a corporate issuer that met the standards of T.C.A. §48-1-103(a)(8), at the time of succession, the successor corporate issuer shall be deemed to have met the standards of T.C.A. §48-1-103(a)(8), if the predecessor and successor corporations taken together do so, provided that:

(a) The succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company;

(b) The assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; and

(c) The net income of the predecessor may, in accordance with generally accepted accounting principles, be consolidated with the income of the successor corporation.

Authority: T.C.A. §§48-1-103(a)(8), 48-1-115, and 48-1-116(a).

0780-04-02-.10 NASDAQ/NMS EXEMPTION.

(1) Exemption. By the authority delegated to the Ccommissioner in T.C.A. §§48-1-103(b)(11) and 48-1-116, the following transactions are determined to be exempt from T.C.A. §§48-1-104 and 48-1-113:

Any sale of securities that are designated or approved for designation upon notice of issuance on the NASDAQ/NMS, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

(2) The Ccommissioner:

(a) Shall have the authority by rule or order to deny, suspend, or revoke the exemption created by this rRule as to a specific issuer or category of securities; and

(b) May rescind this rRule based on a finding that;

1. The requirements of the NASDAQ/NMS have materially changed from those set forth in paragraph (3) of this Rulebelow and no longer afford equivalent investor protection; or

2. The requirements of the NASDAQ/NMS as set forth in paragraph (3) of this Rulebelow are not applied or enforced sufficiently to afford protection to investors.

(3) (a) 1. The NASD FINRA shall require at least the following minimum standards to be met for the designation of an issuer's securities on the quotation system:

	Alt. No. 1	Alt. No. 2

Net Tangible Assets	$4,000,000	$12,000,000
Public Float	500, 000	1,000,000
Pre-Tax Income	750,000	----------
Net Income	400,000	----------
Shareholders	800/400	800/400

(The minimum number of shareholders under each alternative is eight hundred (800) for companies with five hundred thousand (500,000) to one million (1,000,000) shares publicly held, and four hundred (400) for companies with over one million (1,000,000) shares publicly held and with daily trading volume in excess of two thousand (2,000) shares per day for six (6) months.)

Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/share	----------
Operating History	----------	3 years

2. The rules of the ~~NASD~~ FINRA shall require at least two (2) authorized market makers for each issuer.

3. For purposes of this subparagraph (3)(a), the term "net tangible assets" is meant to include the value of patents, copyrights, and trademarks but to exclude the value of good-will.

(b) The ~~NASD~~ FINRA shall require at least the following minimum corporate governance standards for its domestic issuers;*

1. Distribution of Annual and Interim Reports.

(i) Each issuer shall distribute to shareholders copies of an annual report containing financial statements of the company and its subsidiaries. The report shall be distributed to shareholders in a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the ~~NASD~~ FINRA at the time it is distributed to shareholders.

(ii) Each issuer which is subject to SEC Rule 13a-13 (17 C.F.R. §240.13a-13) shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing of its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the ~~NASD~~FINRA. The statement of operations contained in quarterly reports shall disclose at a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

(iii) Each issuer which is not subject to SEC Rule 13a-13 (17 C.F.R. §240.13a-13) and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in such interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the ~~NASD~~FINRA.

2. Independent Directors. Each issuer shall maintain a minimum of two (2) independent directors on its board of directors. For purposes of this ~~section~~subparagraph (3)(b), "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the ~~NASD~~FINRA.

5. Quorum. Each issuer shall provide for a quorum as specified in its bylaws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less ~~that~~ than thirty-three and one-third percent (33 1/3%) of the outstanding shares of the issuer's common voting stock.

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the ~~NASD~~FINRA.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

8. Shareholders' Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:

   (i) Options plans or other special remuneration plans for directors, officers, or key employees.

   (ii) Actions resulting in a change in control of the issuer.

   (iii) The acquisition, direct or indirect, of a business, a company, tangible or intangible assets, or property or securities representing any such interests:

      (I) From a director, officer, or substantial security holder of the issuer (including its subsidiaries and affiliates), or from any company or party in which one of such persons has a direct or indirect interest; and

      (II) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of twenty-five percent (25%) or more.

(c) Voting Rights.

1. The ~~NASD~~ FINRA rules shall provide that no rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/NMS ("authorization") or the continuance of the authorization, of any common stock or other equity security of a domestic issuer if, on or after September 1, 1988, the issuer issues any class of security or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share

voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the 1934 Act.

2. For purposes of ~~sub~~part (3)(c)(1.) of this Rule~~subparagraph (c)~~, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

   (i) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial owner or record holder;

   (ii) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuers held by a beneficial owner or record holder based on the length of time such shares have been held by such beneficial owner or record holder;

   (iii) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer; or

   (iv) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For purposes of part (3)(c)1. of this Rule~~subparagraph (c)~~, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

   (i) The issuance of securities pursuant to an initial registered public offering;

   (ii) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of common stock of the issuer;

   (iii) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer; or

   (iv) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. For the purposes of this subparagraph (3)(c), the terms below shall have the following meanings and the rules of the ~~NASD~~ FINRA shall include such definitions for purposes of the prohibition in part (3)(c)1. of this Rule~~subparagraph (c)~~:

   (i) "Common Stock" shall include any security of an issuer ~~designed~~ designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is common stock (e.g., a

security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote.).

(ii) "Equity security" shall include any equity security defined as such pursuant to SEC Rule 3a11-1 ~~under the 1934 Act~~ (17 C.F.R. §240.3a11-1).

(iii) "Domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in SEC Rule 3b-4 ~~under the 1934 Act~~ (17 C.F.R. §240.3b-4).

(iv) "Security" shall include any security defined as such pursuant to Section 3(a)(10) of the 1934 Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption, or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligation to the holders of that class of securities.

(d) Maintenance Criteria. After authorization for designation of a security on the NASDAQ/NMS, the issuer of such security must meet the following criteria in order for such designation to continue in effect:

1. The issuer of the security has net tangible assets of at least:

(i) Two million dollars ($2,000,000) if the issuer sustained losses from continuing operations and/or net losses in two (2) of its three (3) most recent fiscal years; or

(ii) Four million dollars ($4,000,000) if the issuer has sustained losses from continuing operations and/or net losses in three (3) of its four (4) most recent fiscal years.;

2. There are at least two hundred thousand (200,000) publicly held shares;

3. There are at least four hundred (400) shareholders or at least three hundred (300) shareholders of round lots; and

4. The aggregate market value of publicly held shares is at least one million dollars ($1,000,000).

Authority: T.C.A. §§ 48-1-103(b)(11), 48-1-104, 48-1-113, 48-1-115, ~~and~~ 48-1-116~~(a)~~, §3(a)(10) and §12 of the Securities Exchange Act of 1934, 17 C.F.R. §240.3a11-1, 17 C.F.R. §240.3b-4, and 17 C.F.R. §240.13a-13.

0780-04-02-.11 RESERVED.

0780-04-02-.12 NOTICE FILINGS FOR COVERED SECURITIES.

(1) Initial notice filings for covered securities.

(a) An initial notice filing for a covered security of an issuer to be sold in this state shall contain:

1. aA copy of the issuer's prospectus and statement of additional information; however, if the person making the notice filing provides an accurate filing number from the Electronic Data Gathering Access and Retrieval (EDGAR) system or other electronic data gathering access and retrieval system maintained by the SEC, or other identifying designation issued by the SEC, paper copies of the issuer's prospectus and additional information are not required to be filed with the Division;

2. aA completed and properly executed Form U-2, as provided under T.C.A. §48-1-124(e);

3. eEither (i) a completed and properly executed Form NF, Form D, or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the SECecurities and Exchange Commission; and

4. tThe appropriate filing fee as set forth in T.C.A. §48-1-125.

(b) An issuer of a security, which is subject to the notice filing requirements for covered securities, shall make an initial notice filing with the Division prior to the sale of such security in this state, unless the security being sold is a covered security as defined under T.C.A. §48-1-102(8)(F)(iv).;

(c) An issuer of a security that is defined as a covered securityies under T.C.A. §48-1-102(8)(F)(iv) shall make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such covered security in this state.

(2) Renewal of notice filings for covered securities.

(a) A renewal of a notice for a covered security that may be renewed as provided under T.C.A. §48-1-125(c) shall consist of:

1. aA copy of the issuer's prospectus and statement of additional information;

2. eEither (i) a completed and properly executed Form NF, Form D, or Form U-1, as applicable, or in (ii) a copy of the issuer's federal registration statement as filed with the SECecurities and Exchange Commission; and

3. tThe appropriate filing fee as set forth in T.C.A. §48-1-125 (a).

(b) Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. §48-1-125(c).

(c) A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:

1. sSuch renewal is deficient.; and

2. sSuch deficiency is not remedied addressed prior to the expiration of the notice filing.

(3) Deficient notice filings.

(a) Documents. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Ccommissioner suspending the offer of or sale of such covered security in this state as provided under T.C.A. §48-1-125(d), if:

1. tThe filing is deficient by failing to satisfy the document filing requirements of T.C.A. §48-1-125 (a), (b), or (c) and ~~paragraph~~ parts (1)(a)1.-3. of this rRule;, and

2. tThe document deficiency is not ~~cured~~ addressed within ten (10) business days of the issuer's receipt of notification from the Division.

(b) Fees. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Ccommissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. §48-1-125 (d), if:

1. tThe filing is deficient by failing to satisfy the fee requirements of T.C.A. §48-1-125 and ~~paragraph~~ part (1)(a)(4). of this rRule;, and

2. tThe fee deficiency is not ~~cured~~ addressed within ten (10) business days of the issuer's receipt of notification from the Division.

(c) In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. §48-1-116.

(4) Failure to make notice filings.

(a) Any issuer who fails to make a notice filing for a covered security to be sold in this state, as set forth under T.C.A. §48-1-125 and subparagraph (1)(b) or (1)(c) of this rRule, shall be subject to a stop order of the Ccommissioner, as provided under T.C.A. §48-1-125(d), suspending the offer or sale of such securities in this state.

(b) For purposes of T.C.A. §48-1-125 (d)(2) and paragraph (4) of this rRule, a failure to make a notice filing cannot be promptly remedied:

1. iIf the security is a covered security, other than a covered security as defined under T.C.A. §48-1-102(8)(F)(iv) and the delay in making the notice filing, required under T.C.A. §48-1-125 (a), exceeds ten (10) business days from the date of the first sale of such security in this state;, or

2. iIf the security is a covered security, as defined under T.C.A. §48-1-102(8)(F)(iv), and the delay in making the notice filing required under T.C.A. §48-1-125 (b) exceeds twenty five (25) calendar days from the date of the first sale of such security in this state.

(5) Refusal to pay notice filing fees.

(a) For purposes of this paragraph (5), an issuer is deemed to refuse to pay the notice filing fee when:

1. tThe issuer is subject to a stop order under the provisions of subparagraph (3)(b) of this rRule; or

2. tThe issuer has failed to make a notice filing, as defined in subparagraph (4)(b), of this Rule, and includes a failure to pay the appropriate notice filing fee.

(6) Unit Investment Trusts.

(a) Notwithstanding any of the requirements in paragraph (1) of this rRule to the contrary, notice filings of series (except the first in a series) of unit investment trusts registered with the SEC under the Investment Company Act and not engaged in the business of investing in securities issued by one (1) or more open end management investment companies may comply with the following alternative filing requirements:

1. One (1) completed and properly executed Form NF, including the name and the address of the trustee, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate;

2. A statement identifying one (1) or more previous series of the unit investment trust for which an application for registration was made effective by the Division within five (5) years preceding the filing of the current application;

3. The following representations as filed with the SEC pursuant to SEC Rule 487 (17 C.F.R. §230.487):

   (i) That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in the previous series identified by the applicant; and

   (ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment is being filed, the registration statement or pre-effective amendment does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the applicant;

4. A copy of any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the SEC;

5. The appropriate filing fee computed in accordance with T.C.A. §48-1-125; and

6. Forms U-2 and U-2A or a statement in the transmittal letter that such forms are already on file with respect to the issuer under its current name of each firm-commitment underwriter.

(b) Upon SEC effectiveness, the following shall be filed with the Division;

1. Notice of SEC effectiveness, to include:

   (i) The full name of each series of the unit investment trust registered with the SEC;

   (ii) The time and date declared effective by the SEC;

   (iii) The public offering price per unit;

   (iv) The amount of sales commission per unit;

   (v) The number of units registered with the SEC; and

   (vi) The total aggregate dollar amount of the offering.

2. One (1) copy of the post-effective amendment containing one (1) copy of the final prospectus.

(c) Each series underlying a unit investment trust constitutes a separate and distinct security under the Act and shall be separately notice filed under the Act. Unit investment trusts applying to notice file multiple series shall file separate notices for each series containing all of the information specified in subparagraph (6)(a) ~~above~~of this Rule, with each Form NF specifically identifying the series to be notice filed.

(d) The ~~C~~commissioner may deny, suspend, or revoke the availability of this paragraph (6) to a unit investment trust if it appears to the ~~C~~commissioner that a notice filing that is or is intended to become effective in this state in reliance upon this paragraph (6) is incomplete or inaccurate in any material respect or the filer has not complied with the requirements set forth in this paragraph (6).

(e) The notice filing of a unit investment trust expires one (1) year from the date of SEC effectiveness, subject to T.C.A. §48-1-125.

Authority: T.C.A. §§48-1-102(8)(F)(iv), 48-1-108, 48-1-115, ~~48~~-1-116, 48-1-~~108~~121, 48-1-124(e), ~~and~~ 48-1-125; Public Acts of 1997, Chapter 164, ~~Section~~ §8; §18 of the ~~Federal~~ Securities Act of 1933~~93~~, as amended by the National Securities Markets Improvement Act of 1996, and 17 C.F.R. §230.487.

0780-04-02-.13 NOTICE FILINGS FOR EXEMPT EMPLOYEE PLANS.

(1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities in an employee stock purchase/~~-~~option plan must file with the ~~C~~commissioner no later than fifteen (15) days after the first sale:

(a) One (1) copy of the form entitled "Notice of Sale of Securities Pursuant to Employee Stock Purchase/Option Plan Exemption", as provided by the Division;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(d) A non-refundable filing fee in the amount of five hundred dollars ($500); and

(e) A statement noting the date of the first sale, if any, of such security in this state.

Authority: T.C.A. §§~~48~~-1-103(b)(9), 48-1-115, 48-1-116, 48-1-124, and Public Acts of 2001, Chapter 278.

0780-04-02-.14 NOTICE FILINGS FOR SECURITIES SOLD TO ACCREDITED INVESTORS.

(1) All issuers who wish to offer securities in, or into this state in reliance on the exemption afforded to sales of securities to accredited investors, as set forth in ~~Tenn. Code Ann~~T.C.A. § 48-1-103(b)(14), must file with the ~~C~~commissioner no later than fifteen (15) days after the first sale:

(a) One (1) copy of the form entitled "Notice of Sale of Securities Pursuant to Accredited Investor Exemption", as provided by the Division;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) One (1) copy of the general announcement, if one is made regarding the proposed offering;

(d) A non-refundable filing fee in the amount of five hundred dollars ($500); and

(e) A statement noting the date of the first sale, if any, of such security in this state.

Authority: T.C.A. §§ 48-1-103(b)(14), 48-1-115, 48-1-116, 48-1-124, and Public Acts of 2001, Chapter 278.

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

(1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the Ccommissioner no later than ten (10) days prior to the first sale:

(a) One (1) copy of the Form U-1, Uniform aApplication to Register Securities;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(d) A non-refundable filing fee in the amount of one hundred dollars ($100.00); and

(e) A copy of all sales or advertising literature used or proposed to be used.

Authority: T.C.A. §§ 48-1-103(b)(10)(a)(13), 48-1-113, 48-1-115, and 48-1-116(a), and 48-1-124.

0780-04-02-.16 UNSOLICITED TRANSACTION EXEMPTION.

(1) Preliminary Notes:

(a) Nothing in this rRule is intended to relieve registered or exempt broker-dealers or agents from the due diligence, suitability, know-your-customer standards, or any other requirements of the law otherwise applicable to such registered or exempt persons.

(2) Exemption. By the authority delegated to the Ccommissioner in T.C.A. §§48-1-103(b)(20) and 48-1-116, all registered or exempt broker-dealers who intend to rely upon the exemption afforded to unsolicited non-issuer transactions on the basis of T.C.A. §48-1-103(b)(20) must comply with the following to be exempt from T.C.A. §§48-1-104 and 48-1-113:

(a) Shall retain the following information for each such unsolicited non-issuer transaction:

1. The CRD numbers for the broker-dealer firm and the agent;

2. The name of the broker-dealer;

3. The name of the agent;

4. The date of the transaction;

5. The dollar amount of the transaction, the number of shares, and the price per share;

6. The Cusip number for each security making up the order placed by the purchaser;

7. The name of each security making up the order placed by the purchaser;

8. The purchaser(s)'s account number at the broker-dealer;

9. The broker-dealer's office address;

10. The broker-dealer's branch office identification number (if applicable);

11. An indication that the transaction was not solicited in any way by the broker-dealer or any agent of the broker-dealer; and

12. An indication that the broker-dealer:

    (i) Acted solely as an agent for the purchaser;

    (ii) Had no direct or indirect interest in the sale or distribution of the security ordered by the purchaser; and

    (iii) Received no commission, profit, or other compensation from any source other than the purchaser.

(b) The information in subparagraph (2)(a) of this Rule~~above~~ must be retained by the broker-dealer for a period of five (5) years from the date of the transaction, in a manner consistent with Rule 0780-04-03-.02(1)(b).

(c) Upon request by the Division, based on a complaint or as the result of a Division examination of the broker-dealer's books and records, the broker-dealer must provide the purchaser(s) with a document containing the information retained pursuant to subparagraph (2)(a) of this Rule~~above~~ and must obtain the purchaser(s) signed acknowledgement that the transaction was unsolicited. Such acknowledgement may be in the form of a manual or electronic signature.

Authority: T.C.A. §§~~-~~48-1-103(b)(20), 48-1-111, 48-1-115, 48-1-116~~(~~a), and Public Acts of 2013, Chapter 261.

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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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 2/20/15 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: 2/20/15

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

Subscribed and sworn to before me on: 2/20/15

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/16

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

Herbert H. Slatery III
Attorney General and Reporter

March 11, 2015
Date

Department of State Use Only

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Filed with the Department of State on: 3/16/15

Effective on: 6/14/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Industry Regulation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 48-1-116
EFFECTIVE DATES:	June 14, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule will correct typographical, grammatical, and rulemaking drafting inconsistencies, and updates Chapter 0780-04-03 of the Tennessee Securities Rules pursuant to statutory changes that have occurred since the last general update to the Chapter.

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.

These proposed rules will correct typographical, grammatical, and rulemaking drafting inconsistencies and update the rules pursuant to statutory changes that have occurred since the last general update to Chapter 0780-04-03 and, therefore, will not have an economic impact on small businesses (businesses with fifty (50) or fewer employees).

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 proposed rules will not impact local governments.

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For Department of State Use Only

Sequence Number: 03-13-15
Rule ID(s): 5890
File Date: 3/16/15
Effective Date: 6/14/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by 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.

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

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Barbara Doak
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-9467
Email:	Barbara.Doak@tn.gov

Revision Type (check all that apply):
X 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**
0780-04-03	Industry Regulation
Rule Number	**Rule Title**
0780-04903-.01	Registration
0780-04903-.02	Post-registration
0780-04903-.03	Oil and Gas Issuer-Dealers
0780-04903-.04	Persons Deemed Not to be Broker-Dealers
0780-04903-.05	Exemptions From Investment Adviser Registration
0780-04903-.06	Investment Adviser Notice Filings
0780-04903-.07	Investment Adviser Custody or Possession of Funds or Securities of Clients
0780-04903-.08	Investment Adviser Financial and Disciplinary Disclosure
0780-04903-.09	Advertisement by Investment Advisers

0780-04903-.10	Written Disclosure Statements by Investment Advisers
0780-04903-.11	Persons Deemed Not to be "Agents"
0780-04903-.12	Definition of "client of an investment adviser"
0780-04903-.13	Cash Payments for Client Solicitations
0780-04903-.14	Agency Cross Transactions for Investment Advisory Clients
0780-04903-.15	Exemption from Broker-Dealer Registration for Certain Canadian Broker-Dealers

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-04-03
INDUSTRY REGULATION

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0780-04-03-.05	Exemptions From Investment Adviser Registration	0780-04-03-.12	Definition of "client of an investment adviser"
		0780-04-03-.13	Cash Payments for Client Solicitations
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0780-04-03-.08	Investment Adviser Financial and Disciplinary Disclosure		

Chapter 0780-04-03 Industry Regulation is amended by deleting the Chapter in its entirety and replacing it with the following language:

0780-04-03-.01 REGISTRATION.

(1) Broker-Dealer Registration.

(a) CRD System Eligible Broker-Dealer Applicants.

1. All broker-dealer applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following, unless waived by order of the ~~C~~commissioner.

(i) A ~~f~~Form BD and all information and exhibits required by such ~~f~~Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score on an appropriate principal's examination taken by the executive officers or principals of the applicant.

2. Broker-dealers applying through the CRD System shall also, concurrently with the filing of an application ~~to~~ through the CRD System, file with the Division, unless waived by the ~~C~~commissioner:

(i) (I) A copy of the applicant's most recent annual audited report filed pursuant to SEC Rule 17a-5 ~~under the 1934 Act~~(17 C.F.R. §240.17a-5), plus all quarterly FOCUS Reports filed pursuant to that ~~r~~Rule since the most recent annual audited report; or

(II) If the applicant has not yet had an audit performed pursuant to its first fiscal year of existence, in lieu of complying with item (1)(a)2.(i) (I) ~~above~~ of this Rule it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant.

Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form to be executed by the accountant designated on such form; or

(III) The financial reports required by items (1)(a)2.(i) (I) and (II) of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer.

(ii) Such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Broker-Dealer Applicants. All applications for initial registration as a broker-dealer other than those specified in subparagraph (1)(a) ~~above~~ of this Rule shall be submitted directly to the Division and shall contain the following information, unless waived by order of the Commissioner:

1. A Form BD and all information and exhibits required by such Form;

2. The appropriate application fee as set forth in the Act;

3. (i) A balance sheet and income statement as of the end of the applicant's most recent fiscal year prepared in accordance with generally accepted accounting principles consistently applied and examined and reported on by an independent: (I) certified public accountant; or (II) public accountant currently licensed in the State of Tennessee, and any subsequent quarterly balance sheets and income statements prepared in accordance with generally accepted accounting principles consistently applied; or

(ii) If the applicant has not yet had an audit performed ~~to~~ in its first year of existence, in lieu of complying with subpart (1)(b)3.(i) of this Rule, it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant. Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form as provided by the Division. Such Designation of Accountant form shall be executed by the designated accountant;

(iii) The financial reports required by subparts (1)(b)(3.(i-ii) of this Rules ~~(i) and (ii) above~~ shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

4. Satisfactory evidence of a passing score on an appropriate ~~principle's~~ principal's examination taken by the executive officers or principales of the applicant; and

5. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all of the

information requested by the Division pursuant to subparagraph (1)(a) or parts (1)(b)1. ~~through~~ 5. ~~above~~ of this Rule is received by the Division.

(d) All broker-dealers who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of other broker-dealers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) A person who acts as a "clearing broker-dealer" with respect to any securities transaction in Tennessee must register as a broker-dealer in Tennessee.

(f) A registered broker-dealer shall not conduct business in this state through an agent unless and until the broker-dealer has registered that agent in this state.

(g) The registration of a broker-dealer shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as a broker-dealer shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The ~~C~~commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to withdraw on Form BDW by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form BDW filed on behalf of a registrant or a written request filed on behalf of an applicant is actually received by the Division through the CRD System or through a direct filing with the Division, whichever is appropriate for the applicant.

(h) Abandonment.

1. The Division may determine that an application to register a broker-dealer has been abandoned if:

(i) The application has been on file with the Division for more ~~that~~ than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Agent Registration.

(a) CRD System Eligible Agent Applicants.

1. All agent applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following:

   (i) A Form U4 and all information and exhibits required by such fForm;

   (ii) The appropriate application fee as set forth inby the Act; and

   (iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Agents applying for registration through the CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Agent Applicants. All applications for registration as an agent other than those specified in subparagraph (2)(a) above of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such fForm;

2. The appropriate application fee as set forth inby the Act;

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this rRule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (2)(a) or parts (2)(b)-1. - through 4. above of this Rule is received by the Division.

(d) All agents who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of all other agents must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) The registration of an agent shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an agent shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The Ccommissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the

Division through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is received directly by the Division.

(f) There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his relationship with a broker-dealer with whom he is registered and commences a new relationship with another broker-dealer, a termination of registration shall be effected by the broker-dealer with which the individual agent had the prior relationship and an application for initial registration shall be filed by the broker-dealer with which the individual agent proposes to have the new relationship. The termination of registration shall be effected by the broker-dealer by submitting a Form U5 through the CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (2)(f) are not required in the event of a mass transfer of agent registrations pursuant to CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).

(g) All agent applicants who have voluntarily terminated registration with a broker-dealer and who are eligible under the rules established by the CRD System may apply for temporary registration with another broker-dealer through the CRD System by complying with the procedure required by the CRD System. In the case of all other voluntary terminations of a non-CRD agent's registration with a particular broker-dealer pursuant to subparagraph (2)(f), of this Rule, the Division may, in its discretion, allow the agent to be temporarily registered with the broker-dealer with whom the agent is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other broker-dealer. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an agent has been abandoned if:

   (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

   (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the CRD System has been abandoned, the Division shall, as provided through the routine operation of the CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(3) Investment Adviser Registration.

(a) IARD Eligible Investment Advisers.

1. All investment advisers who are eligible must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, unless waived by order of the ~~C~~commissioner:

   (i) A Form ADV and all information and exhibits required by such f~~F~~orm; ~~and~~

   (ii) The appropriate application fee as set forth in the Act; and

   (iii) Satisfaction of the investment adviser representative examination requirements under ~~rule~~ paragraph (10) of this Rule ~~0780-04-03-.01(10)~~ by appropriate executive officers or principals of the applicant.

2. Investment advisers applying through the IARD shall also, concurrently with the filing of an application to the IARD, file with the Division, unless waived by order of the ~~C~~commissioner:

   (i) (I) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of ~~its~~its by-laws certified by the secretary of the corporation;

   (II) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or

   (III) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement, if any, certified by a managing member;

   (ii) (I) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this ~~subsection~~ item (3)(a)2.(ii)(I), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

   (II) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02~~(4)(a)2~~. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit; and

(iii) Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Applicants. All applications for initial registration as an investment adviser other than those specified in subparagraph (3)(a) ~~above~~ of this Rule shall be submitted in paper format ~~to the IARD or~~ directly to the Division and shall contain the following information, unless waived by order of the ~~C~~commissioner:

1. A Form ADV and all information and exhibits required by such ~~f~~Form;

2. The appropriate application fee as set forth in the Act;

3. (i) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its by-laws certified by the secretary of the corporation;~~.~~

(ii) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or~~.~~

(iii) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement certified by a managing member;

4. (i) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subpart (3)(b)~~4~~2.(i), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

(ii) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02~~(4)(a)2~~. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit;~~.~~

5. Satisfaction of the investment adviser representative examination requirements under paragraph (10) of ~~rule~~ Rule 0780-04-03-.01~~(10)~~ by appropriate executive officers or principals of the applicant;~~.~~

6. Such other information as the Division may request of a particular applicant to determine eligibility for registration; and~~.~~

7. Evidence of a temporary exemption; or, prior to December 31, 2003, evidence of a continuing hardship exemption as issued by the Division or another state securities administrator, which exempts the applicant from the requirements to make electronic filings through the IARD as required by subparagraphs (36)(a) and (36) (e) ~~herein~~of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.

(c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through the IARD as required by the subparagraphs (3)(a) and (3)(e) ~~herein~~ of this Rule and by ~~rule~~ subparagraph (4)(d) of Rule 0780-04-03-.02. ~~(4)(d) Investment Adviser Reporting Requirements.~~

1. Temporary Hardship Exemption.

(i) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the state securities administrator where the investment adviser's principal place of business is located, or the Division if appropriate, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and

(II) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven (7) business days after the filing was due.

(iii) Effective Date Upon Filing. The temporary hardship exemption will be deemed effective by the ~~C~~commissioner upon receipt of the complete Form ADV-H by the state securities administrator where the investment adviser's principal place of business is located or with the Division if such other state securities administrator does not routinely process applications for temporary hardship exemptions. Multiple temporary hardship exemption requests within the same calendar year may be allowed or disallowed at the discretion of the ~~C~~commissioner.

2. Continuing Hardship Exemption.

(i) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate to the satisfaction of the ~~C~~commissioner that the electronic filing requirements of these ~~r~~Rules are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the appropriate state securities administrator, or the Division if appropriate, at least twenty (20) business days before a filing is due; and

(II) If a filing is due to more than one (1) state securities administrator, the Form ADV-H must be filed with the state securities administrator where the investment adviser's principal place of business is located

or with the Division if such state securities administrator does not routinely process applications for continuing hardship exemptions. If the Division is the state securities administrator which receives the application for a continuing hardship exemption, the Ccommissioner will grant or deny the application within ten (10) business days after the filing of Form ADV-H or within ten (10) business days after the receipt of further information or materials requested from the investment adviser by the Division to determine eligibility for such exemption.

(iii) Effective Date Upon Approval. The exemption is effective upon approval by the state securities administrator where the investment adviser's principal place of business is located or by the Ccommissioner, whichever is appropriate. The time period of the exemption may be no longer than one (1) year after the exemption approval date. Upon such approval, the investment adviser must, no later than five (5) business days after the exemption approval date, commence submitting necessary filings to the IARD in paper format (along with the appropriate processing fees), or to the Division, whichever is appropriate, for the period of time for which the exemption is granted.

3. Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the state securities administrator where the investment adviser's principal place of business is located or the Ccommissioner, whichever is appropriate. 'Approval of an exemption by an appropriate state securities administrator in another state will be recognized and accepted by the Ccommissioner except that the Ccommissioner will not grant, accept, or recognize any continuing hardship exemption after December 31, 2003.

(d) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this rRule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraphs (3)(a) or (3)(b) of this Rule is received by the Division.

(e) All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(f) The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as an investment adviser shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The Ccommissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of application to withdraw on Form ADV-W by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form ADV-W or a written request filed on behalf of an applicant through the IARD or through

a direct filing with the Division, whichever is appropriate, is actually received by the Division.

(g) Abandonment.

1. The Division may determine that an application to register an investment adviser has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without the applicant becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the ~~C~~commissioner shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Examination of Agents and Principals of Broker-Dealers.

(a) Agents. Each applicant for initial registration as an agent shall receive a passing grade on:

1. An examination administered by the ~~NASD~~FINRA, the New York Stock Exchange, or the SEC which tests the applicant's general knowledge of securities principles; and

2. The Uniform Securities Agent State Law Examination (USASLE/Series 63) or the Uniform Combined State Law Examination (UCSLE/Series 66) as either is administered by the ~~NASD~~FINRA.

(b) Principals. Each applicant for initial registration as a principal or supervisory officer of a broker-dealer must receive a passing grade on an appropriate securities examination for principals administered by the ~~NASD~~ FINRA, the New York Stock Exchange, or the SEC.

(c) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (4), a duly granted examination waiver by the ~~NASD~~FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the examination requirements of part (4)(a)1. and subparagraphs (4)(b) and (4)(d) ~~herein~~of this Rule.

(d) Each applicant for initial registration:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity for which the applicant is currently seeking registration within the preceding twenty-four (24) months.

(5) Registered Broker-Dealer Net Capital Requirements.

(a) ~~NASD~~ FINRA Broker-Dealers and Exchange Members.

1. ~~1.~~ All broker-dealers, except government securities broker-dealers, who are members of the ~~NASD~~ FINRA or a national exchange, shall have and maintain net capital in such minimum amounts as are prescribed for their activities under SEC ~~r~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~promulgated under the 1934 Act~~.

2. The aggregate indebtedness of each broker-dealer described in part (5)(a)1. of this Rule to all persons shall not exceed the levels prescribed under SEC ~~r~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~promulgated under the 1934 Act.~~

3. For purposes of this subparagraph (5)(a), the term "net capital" shall have the same meaning as in SEC ~~r~~Rule 15c3-1 (17 C.F.R. §240.15c3-1)~~promulgated under the 1934 Act~~.

(b) Government Securities Broker-Dealer. Each registered government securities broker-dealer shall have and maintain liquid capital in such minimum amounts as are prescribed under SEC ~~r~~Rule 15Ca2-2 ~~and~~ (17 C.F.R. §240.15Ca2-2) and Department of Treasury ~~r~~Rule 402.2 (17 C.F.R. §402.2)~~promulgated under the 1934 Act.~~

(c) Other Broker-Dealers.

1. Each registered broker-dealer that does not fall within subparagraphs (5)(a) and (5)(b) ~~above~~ of this Rule shall have and maintain a minimum net capital of twenty-five thousand dollars ($25,000). If such broker-dealer has a net capital of less than one hundred thousand dollars ($100,000), it shall post a surety bond of ten thousand dollars ($10,000).

2. For purposes of this subparagraph (5)(c), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

(6) Investment Adviser Net Capital Requirements.

(a) Except as provided under subparagraph (6)(d) of this ~~paragraph (6)~~Rule, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars ($15,000).

(b) For purposes of this paragraph (6), "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied minus the following non-allowable assets:

1. In the case of an individual: home equity, home furnishings, automobiles, goodwill, and any other personal item not readily marketable;

2. In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates;

3. In the case of a partnership: advances or loans to partners or affiliates, and ~~uncollarterized~~ uncollateralized receivables ~~form~~ from partners or affiliates; and

4. In the case of a limited liability company: advances or loans to members or affiliates, and ~~uncollaterized~~ uncollateralized receivables from members or affiliates.

(c) The Division may require that a current appraisal be submitted in order to establish the value of any asset.

(d) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of this paragraph (6) if:

1. The investment adviser is ~~licensed~~ registered as an investment adviser in the state in which it maintains its principal place of business;

2. The investment adviser is in compliance with the applicable net capital requirement in the state in which it maintains its principal place of business; and

3. The investment adviser is in compliance with any bonding requirement in the state in which it maintains its principal place of business.

(e) For purposes of this paragraph (6), "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(7) Branch Offices and Other Business Locations of Broker-Dealers.

(a) Every broker-dealer registered in Tennessee shall notify the Division of the establishment of any branch office or other business location in Tennessee, as well as its current address and the name or names of the agent or agents currently in charge.

(b) Such notification of establishment, change in address, or change in identity of any agent or agents in charge thereof must be filed with the Division through the CRD System or through a direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.

(8) Withdrawal of Applications. An application for registration as a broker-dealer or investment adviser may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System and the IARD or, for other broker-dealers and other investment advisers, by filing a written request for withdrawal directly with the Division. An application for registration as an agent or investment adviser representative may be withdrawn prior to the effectiveness of the registration by following the procedures established by the CRD System or IARD~~,~~ or, for other agents and other investment adviser representatives, by filing a written request for withdrawal directly with the Division.

(9) Investment Adviser Representative Registration.

(a) IARD and CRD System Eligible Investment Adviser Representative Applicants.

1. All investment adviser representative applicants who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the application procedures required by the IARD and CRD System. The application filed through the IARD and CRD System shall contain the following:

(i) A Form U4 and all information and exhibits required by such ~~f~~Form;

(ii) The appropriate application fee as set forth in~~by~~ the Act; and

(iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Investment adviser representatives applying for registration through the IARD and CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Representative Applicants. All applications for registration as an investment adviser representative other than those specified in subparagraph (9)(a) ~~above~~ of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such ~~f~~Form;

2. The appropriate application fee as set forth in~~by~~ the Act;

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. §48-1-110(a)(4) and this ~~r~~Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (9)(a) ~~or~~ and parts (9)(b)~~-~~1.~~-~~4.~~, through 4, above~~ of this Rule is received by the Division.

(d) All investment adviser representatives who are eligible must apply for renewal of registration in Tennessee through the IARD and CRD System by complying with the requirements of the IARD and CRD System. Applications for renewal of all other investment adviser representatives must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The ~~C~~commissioner may institute a revocation or denial proceeding under T.C.A. §48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the IARD and CRD System, or for non-IARD and CRD System investment adviser representatives, the date upon which the Form U5 is received directly by the Division.

(f) There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates his relationship with an investment adviser with whom he is registered and commences a new relationship with an-other investment adviser, a termination of registration shall be effected by the investment adviser with which the individual investment adviser representative had the prior relationship and an application for initial registration shall be filed by the investment adviser with which the individual investment adviser representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 through the IARD and CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (9)(f) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD and CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-1-110(c).

(g) All investment adviser representative applicants who have voluntarily terminated registration with an investment adviser and who are eligible under the rules established by the IARD and CRD System may apply for temporary registration with another investment adviser through the IARD and CRD System by complying with the procedure required by the IARD and CRD System. In the case of all other voluntary terminations of a non-IARD and CRD System eligible investment adviser representative's registration with a particular investment adviser pursuant to subparagraph (9)(f) of this Rule, the Division may, in its discretion, allow the investment adviser representative to be temporarily registered with the investment adviser with whom the investment adviser representative is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other investment adviser. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an investment adviser representative has been abandoned if:

   (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

   (ii) A period ~~on~~ of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the IARD and CRD System has been abandoned, the Division shall, as provided through the routine operation of the IARD and CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(i) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-~~110~~109(c)(2), and who has no place of business located within this state, is not required to register as an investment adviser representative of such investment adviser in this state.

(j) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-~~110~~109(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule ~~275.~~203A-3 (17 C.F.R. §275.203A-3)~~,under the Investment Advisers Act,~~ is not required to register as an investment adviser representative of such investment adviser in this state.

(k) An individual who solicits, offers, ~~offers~~ or negotiates for sale of or sells investment advisory services, but who is not compensated directly or indirectly for such activities, is not required to register as an investment adviser representative in this state.

(10) Examination of Investment Adviser Representatives.

(a) Each applicant for initial registration as an investment adviser representative:

1. Shall receive a passing grade on the Uniform Investment Adviser Law Examination (UIALE/Series 65) as administered by ~~NASD~~the FINRA; ~~or~~

2. Shall receive passing grades on the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (UCSLE/Series 66) as administered by ~~NASD~~the FINRA; ~~or~~

3. Shall have been registered as an investment adviser representative in any state within the preceding twenty-four (24) months; or

4. Shall currently hold one (1) of the following professional designations:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;

(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or

(v) Chartered Investment Counselor (CIC) awarded by the Investment ~~Counsel~~ Adviser Association ~~of America~~, Inc.

(b) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (10), a duly granted examination waiver by the ~~NASD~~FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (10)(a)2. and subparagraph (10)(c) ~~herein~~of this Rule.

(c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (10)(a)1. ~~and (a-)~~2. ~~herein~~of this Rule:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity appropriate to the required examination within the preceding twenty-four (24) months.

(d) The requirements of this paragraph (10) shall apply to all applications for investment adviser registration and investment adviser representative registration filed with the Division on or after April 1, 2004.

Authority: T.C.A. §§48-1-102, 48-1-109, ~~48-1-109(d),~~ 48-1-110, ~~48-1-110(c), 48-1-110(d),~~ 48-1-111, 48-1-112, ~~(a)(2)(B),~~ 48-1-115, ~~48-1-115(f),~~ 48-1-116~~(a)~~, Public Acts of 2001, Chapter 61, ~~and~~ §222 of the Investment Advisers Act of 1940, as amended by §304(c) of the National Securities Markets Improvement Act of 1996, 17 C.F.R. §240.15c3-1, 17 C.F.R. §240.15Ca2-2, 17 C.F.R. §240.17a-5, 17 C.F.R. §275.203A-3, and 17 C.F.R. §402.2.

0780-04-03-.02 POST REGISTRATION.

(1) Broker-Dealer Required Records.

(a) Every broker-dealer registered in this state shall make and keep current the following books and records relating to its business, unless waived by order of the ~~C~~commissioner:

1. Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities (including certificate number), all receipts and disbursements of cash, and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, the settlement date, the name or other designation of the person from whom purchased or received or to whom sold or delivered, and some identification of the agent effecting the transaction;

2. Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;

3. Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or principals thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts, and all other debits and credits to such accounts.

4. Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and securities loaned;

(iv) Monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);

(v) Securities failed to receive and failed to deliver; and

(vi) A record of all puts, calls, spreads, and straddles and other options in which the broker-dealer has any direct or indirect interest or which it has granted or guaranteed, containing at least identification of the security and the number of units involved;

5. A memorandum of each order (order ticket) and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order instructions for execution, or, if it is not so transmitted, the time when it is received;

6. A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution;

7. Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or principals of the broker-dealer;

8. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers, partners, or principals showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried;

9. Copies of all communications, correspondence, and other records relating to securities transactions with customers;

10. A separate file containing all written complaints made or submitted by customers to the broker-dealer or agents relating to securities transactions;

11. A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability;

12. For each cash or margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority with respect to the account, the name and address of the beneficial owner of each account, and all margin and lending agreements; provided that in the case of a joint account, or of an account of a corporation, the records are required only as to persons authorized to transact business for the account;

13. A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month;

14. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the broker-dealer;

15. A separate file containing copies of all advertising circulated by the broker-dealer in the conduct of its securities business;

16. A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form C-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in ~~rule~~ subparagraph (5)(a) of Rule 0780-04-03-.01~~(5)(a)~~. Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed ~~by r~~paragraph (5) of Rule 0780-04-03-.01~~(5)~~;

17. All records required under SEC ~~r~~Rule 17a-3 (17 C.F.R. §240.17a-3) ~~promulgated under the 1934 Act~~ not otherwise delineated in this paragraph (1); and

18. All records made and kept pursuant to ~~section~~ Section 17(f)(2) of the 1934 Act and ~~rule~~ SEC Rule 17f-2 (17 C.F.R. §240.17f-2) ~~under the 1934 Act.~~

(b) All records required to be kept by subparagraph (1)(a) of this Rule~~hereof~~ shall be kept for a period of five (5) years, or ~~f~~or the period of time such records are required to be maintained by SEC ~~r~~Rule 17a-4 (17 C.F.R. §240.17a-4) ~~promulgated under the 1934 Act~~, whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) All broker-dealers who act as investment advisers shall maintain the records required by subparagraph (3)(a) of this ~~r~~Rule.

(2) Broker-Dealer Reporting Requirements.

(a) Financial Reports.

1. Upon request by the Division, each registered broker-dealer shall immediately file with the Division a report of its financial condition as of and for each requested fiscal year, including a balance sheet and income statement for such period. Such annual report shall be prepared and filed in accordance with the following requirements:

(i) The report shall be certified by an independent certified public accountant or independent public accountant;

(ii) The audit shall be made in accordance with generally accepted auditing standards; ~~t~~The examination shall include a review of the accounting system and, the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;

(iii) The report shall be accompanied by an opinion of the accountant as to the broker-dealer's financial condition which is unqualified except as to matters which would not have a substantial effect on the financial condition of the broker-dealer. In addition, the accountant shall submit, as a supplementary opinion, any comments, based upon the audit, as to any material

inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed; and

(iv) The annual report shall include as a supporting schedule a computation of net capital as required by ~~rule~~ paragraph (5) of Rule 0780-04-03-.01~~(5)~~.

2. In lieu of complying with part (2)(a)1. of this ~~r~~Rule, an applicant may file with the Division a copy of the annual financial report required to be filed by SEC Rule 17a-5 (17 C.F.R. §240.17a-5)~~, promulgated under the 1934 Act~~. Any such report shall be filed in the form specified in SEC Rule 17a-5, and shall be accompanied by a copy of any comments made by the independent accountant as to material inadequacies in accordance with SEC Rule 17a-5.

(b) Criminal, Civil, Administrative, or Self-~~r~~Regulatory ~~a~~Actions.

1. Upon request by the Division, each broker-dealer registered in this ~~S~~state shall file with the Division a copy of:

(i) Any indictment or information filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business~~.~~;

(ii) Any complaint filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the securities business or any investment-related business; and

(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing a similar function for the broker-dealer, related to the broker-dealer's securities business or investment-related business.

2. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(b)1.(i~~.~~) ~~through~~ (iii) ~~above~~of this Rule.

3. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(b)1.(i~~.~~) ~~and~~ (iii) ~~above~~of this Rule.

4. Nothing in subparagraph (2)(b) is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~r~~Rules or in the Act.

(c) Transfer of, Control or Change of Name.

1. Each broker-dealer registered in this state shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

2. Such notice of transfer of control or change of name shall be submitted through the CRD System or directly to the Division, whichever is appropriate.

3. Such notice of transfer of control or change of name shall be filed as an amendment to a broker-dealer's existing Form BD or as a complete new Form BD from the successor to a registered broker-dealer as provided under T.C.A. § 48-1-110(c).

4. Each broker-dealer that files a notice of transfer of control or change of name shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

(d) Except as otherwise provided in the Act, or in these rRules, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to Form BD filed promptly with the Division through the CRD System or by a direct filing, whichever is appropriate.

(e) Every broker-dealer shall file directly with the Division the following reports concerning its net capital, liquid capital, and aggregate indebtedness:

1. Immediate telegraphic, facsimile, or written notice whenever the net capital or liquid capital of the broker-dealer is less than that which is required by these rRules, specifying the respective amounts of its net capital, liquid capital, and aggregate indebtedness on the date of notice; and

2. A copy of every report or notice required to be filed by the broker-dealer pursuant to SEC Rule 17a-11 (17 C.F.R. §240.17a-11), contemporaneously with the date of filing with the SEC.

(f) Each broker-dealer shall give immediate telegraphic, facsimile, or written notice to the Division of the theft or mysterious disappearance from any office in this state of any securities or funds which might affect the financial stability of the broker-dealer, stating all material facts known to it concerning the theft or disappearance.

(3) Investment Adviser Required Records.

(a) Except as provided in subparagraph (3)(c) of this Rule ~~of this paragraph~~, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the ~~C~~commissioner:~~.~~

1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;

2. A record showing all payments received, including date of receipt, purpose, and from whom received, and all disbursements, including date paid, purpose, and to whom made;

3. A record showing all receivables and payables;

4. Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date on which, amount of, and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;

5. (i) Records showing separately all securities bought or sold by clients insofar as known to the investment adviser and indicating thereon:

(I) ~~p~~Proper identification of the individual account;~~,~~

(II) ~~t~~The date on which such securities were purchased or sold;~~,~~

(III) ~~t~~The amount of securities purchased or sold;~~,~~ and

(IV) ~~t~~The price at which such securities were purchased or sold; or ~~in the alternative~~

(ii) A ~~R~~record showing:

(I) ~~a~~All securities bought or sold by or for the accounts of all clients of the investment adviser in each month;~~,~~

(II) ~~t~~The total number of shares bought or sold;~~,~~ and

(III) ~~t~~The lowest and highest price at which such purchases or sales were made during the month;

6. Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker~~-~~dealer;

7. Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of discretionary authority;

8. Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions;

9. All partnership certificates and agreements, or all articles of incorporation, by-laws, minute books, and stock certificate books of the investment adviser; ~~and~~

10. A computation made monthly of the investment adviser's net capital; and~~.~~

11. Copies of all written agreements, acknowledgements, and solicitor disclosure statements required by ~~rule~~ paragraphs (5-6) of Rule 0780-04-03-.13~~(5) and (6)~~.

(b) All records required by subparagraph (3)(a) of this ~~r~~Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 204-2 (17 C.F.R. §275.204-2), ~~promulgated under the Investment Advisers Act,~~ whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) An investment adviser which has its principal place of business in another state shall not be subject to the books and records requirement of this paragraph (3) if:

1. The investment adviser is registered ~~or licensed~~ as an investment adviser in the state in which it maintains its principal place of business~~.~~;

2. The investment adviser is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business; and

3. The provisions of this paragraph (3) would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principale place of business.

As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(4) Investment Adviser Reporting Requirements.

(a) 1. Each investment adviser registered in this state shall file with the Division, within ninety (90) days after the end of its fiscal year, a copy of its annual statement of financial condition (balance sheet) and thereafter, any other related financial statements which the Division may request.

2. For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

(i) ~~c~~Certified by an independent certified public accountant or independent public accountant;~~,~~

(ii) ~~p~~Prepared in accordance with generally accepted accounting principles consistently applied;~~,~~ and

(iii) ~~a~~Accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

3. Such annual financial statements shall be sent to the Division by certified mail return receipt requested.

(b) 1. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of:

(i) Any indictment or information filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment~~-~~related business; ~~and~~

(ii) Any complaint filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, related to the investment adviser's securities or investment-related business.

2. Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (4)(b)1.(i) through (iii) of this Rule.

3. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in subparts (4)(b)1.(i) though (iii) of thise Rule.

4. Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(c) 1. Each investment adviser, registered in this state, shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

2. Such notice of transfer of control or change of name shall be submitted directly to the Division or through a central registration depository designated by the Division, whichever is appropriate.

3. Such notice of transfer of control or change of name shall be filed as an amendment to an investment adviser's existing Form ADV or as a complete new Form ADV from the successor to a registered investment adviser as provided under T.C.A. §48-1-110(c).

4. Each investment adviser, which files a notice of transfer of control or change of name, shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipts of such request. Such additional information, if requested, shall be submitted directly to the Division.

5. An investment adviser, which has made a notice filing with the Division pursuant to T.C.A. §48-1-109(c)(2), shall notify the Division of a transfer of control or a change of name by filing an amended Form ADV with the Division within thirty (30) days after the date on which the transfer of control or change of name becomes effective.

(d) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent application for registration shall be set forth in an amendment to Form ADV, pursuant to the updating instructions on Form ADV, and filed promptly through the IARD or directly with the Division, whichever is appropriate.

(e) Each investment adviser registered in this state shall file with the Division within ninety (90) days after the end of the registrant's fiscal year, an annual updated Form ADV prepared pursuant to the updating instructions on Form ADV. Such annual updating amendment to Form ADV shall be filed through the IARD or directly with the Division, whichever is appropriate.

(5) Agent Reporting Requirements.

(a) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the agent and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the agent and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the agent and related to the agent's securities or investment-related business.

(b) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (5)(a)1. ~~through~~ 3. ~~above~~of this Rule.

(c) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (5)(a)1. ~~through~~ 3. ~~above~~of this Rule.

(d) Nothing in this ~~r~~Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~r~~Rules or in the Act.

(6) Prohibited Business Practices.

(a) The following shall be deemed "dishonest or unethical business practices" by a broker-dealer under T.C.A. §48-1-112(a)(2)~~-(G~~g), without limiting that term to the practices specified herein:

1. Causing any unreasonable delay in the delivery of securities purchased by any of its customers;

2. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer;

4. Executing a transaction on behalf of a customer without authority to do so;

5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Executing any transaction in a margin account without obtaining from its customers a written margin agreement prior to settlement date for the initial transaction in the account;

8. Failing to segregate customers' free securities or securities in safe-keeping;

9. Hypothecating a customer's securities without having ~~in~~ a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

10. Charging its customers an unreasonable commission or service charge in any transaction executed as agent for the customer;

11. Entering into a transaction for its own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the ~~NASD~~ FINRA is unreasonable;

12. Entering into a transaction for its own account with a customer in which a commission is charged;

13. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

14. Executing orders for the purchase or sale of securities which the broker-dealer knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

15. Violating any rule of a national securities exchange or national securities dealers association of which it is a member with respect to any customer, transaction, or business in this state;

16. Requiring investment advisory clients of a broker-dealer or an affiliated investment adviser to use the broker-dealer to execute trades for such client, and failing to disclose to such clients their rights to use any broker-dealer for trade execution;

17. For a registered broker-dealer which shares office space with, or occupies the same business premises as, a person not so registered, failing to disclose

clearly, conspicuously, and continuously the relationship, or lack thereof, between it and such other person; and

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; and.

19. Failing to provide information requested by the Division pursuant to the Act or these rRules promulgated thereunder.

(b) The following are deemed "dishonest or unethical business practices" by an agent under T.C.A. §48-1-112(a)(2).(gG), without limiting those terms to the practices specified herein:

1. Borrowing money or securities from a customer;

2. Acting as a custodian for money, securities, or an executed stock power of a customer;

3. Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

4. Operating an account under a fictitious name, unless disclosed to the broker-dealer that the agent represents;

5. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

6. Dividing or otherwise splitting commissions, profits, or other compensation receivable in connection with the purchase or sale of securities in this state with any person not licensed registered as an agent for the same broker-dealer, or for an affiliate of the same broker-dealer;

7. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

8. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer or agent;

9. Executing a transaction on behalf of a customer without authority to do so;

10. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time and/or price for the execution of orders;

11. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

12. Executing any transaction in a margin account without obtaining from ~~its~~ his or her customers a written margin agreement prior to settlement date for the initial transaction in the account;

13. Charging a customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

14. Entering into a transaction for ~~a~~ his or her broker-dealer's account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the ~~NASD~~ FINRA is unreasonable;

15. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

16. Executing orders for the purchase or sale of securities which the ~~broker-dealer~~agent knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

17. Violating any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction, or business in this state; ~~and~~

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer.; and

19. Failing to provide information requested by the Division pursuant to the Act or these rRules~~promulgated thereunder~~.

(c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. §48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:.

1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;

2. Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of the Act or ~~any rule thereunder~~these Rules;

3. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

4. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the ~~broker-dealer~~investment adviser;

5. Executing a transaction on behalf of a customer without authority to do so;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Failing to segregate customers' free securities or securities in safekeeping;

8. Hypothecating a customer's securities without having a lien~~-~~ thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

9. Entering into a transaction for ~~its~~ the investment adviser's own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the ~~NASD~~ FINRA is unreasonable;

10. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client;

11. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;

12. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);

13. Charging a client an unreasonable advisory fee;

14. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

    (i) Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and

    (ii) Charging a client an advisory fee for rendering advice when a commission for executing ~~-~~securities transactions, pursuant to such advice, will be received by the adviser or its employees;

15. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

16. Publishing, circulating, or distributing any advertisement which does not comply with ~~r~~Rule 0780-04-03-.09 under the Act;

17. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

18. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is

subject to and does not comply with the requirements of ~~r~~Rule 0780-04-03-.07 under the Act;

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

    (i) ~~t~~The services to be provided;~~,~~

    (ii) ~~t~~The term of the contract;~~,~~

    (iii) ~~t~~The advisory fee;~~,~~

    (iv) ~~t~~The formula for computing the fee;~~,~~

    (v) ~~t~~The amount of prepaid fee to be returned in the event of contract termination or non-~~-~~performance;~~,~~

    (vi) w~~W~~hether the contract grants discretionary power to the adviser;~~,~~ and

    (vii) ~~t~~That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;

20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public information by such investment adviser or any person associated with such investment adviser;

21. Entering into, extending, or renewing any advisory contract which would violate ~~s~~Section 205 of the Investment Advisers Act;

22. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the~~is a~~Act or of the Investment Advisers Act, or any other practice that would violate ~~s~~Section 215 of the Investment Advisers Act;

23. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of ~~this~~ the Act ~~or~~ or ~~any rule or regulation thereunder;~~ these Rules;

24. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

25. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser; and

26. Failing to provide information requested by the Division pursuant to the Act or these ~~r~~Rules~~promulgated thereunder~~.

(7) Rules of Conduct - Broker-Dealers.

(a) Confirmations.

1. Every broker-dealer shall give or send to the customer a written confirmation, promptly after execution of and before completion of, each transaction. The confirmation shall set forth:

(i) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold, and any commission charged;

(ii) Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

(iii) When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer;

(iv) Whether the transaction was unsolicited; and

(v) The name of the agent that effected the transaction.

2. Compliance with SEC Rule 10b-10 (17 C.F.R. §240.10b-10) ~~promulgated under the 1934 Act~~ or with Article III, Section 12 of the ~~NASD~~ FINRA Rules of Fair Practice shall be deemed compliance with this ~~r~~Rule.

(b) Every broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the Act ~~and r~~, these Rules, and orders thereunder. The procedures shall include the designation by name or title of a number of supervisory employees reasonable in relation to the number of its ~~licensed~~ registered agents, offices, and transactions in this state. A complete set of the procedures and systems for applying them shall be kept and maintained at every branch office.

(c) A broker-dealer shall not enter into any contract with a customer if the contract contains any conditions, stipulations, or provisions binding the customer to waive any rights under the Act, ~~or any rule~~these Rules, or order thereunder. Any such condition, stipulation, or provision is void.

(d) Any person receiving a commission, fee, or other remuneration directly or indirectly for soliciting prospective purchasers in this state in connection with any offering for which an exemption is claimed pursuant to ~~r~~Rule 0780-04-02-.08, the Tennessee Uniform Limited Offering Exemption, must be appropriately registered in this state pursuant to the Act and ~~all rules and regulations promulgated thereunder.~~ these Rules.

(8) Investment Adviser Representative Reporting Requirements.

(a) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the investment adviser representative and alleging the commission of any felony

regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the investment adviser representative and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser representative and related to the investment adviser representative's securities or investment-related business.

(b) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (8)(a)1. ~~through~~ 3. ~~Above~~of this Rule.

(c) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-1-109(c)(2), a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (8)(a)1. ~~through~~ 3. ~~above~~of this Rule.

(d) Nothing in this ~~r~~Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these ~~r~~Rules or in the Act.

Authority: T.C.A. §§48-1-102, 48-1-107, 48-1-109, 48-1-110, 48-1-111, ~~48-1-111(a), 48-1-112(a)(2)(B),~~ 48-1-112~~(a)(2)(G)~~, 48-1-113, 48-1-115~~(f)~~, 48-1-116~~(a)~~, ~~and~~ 48-1-118; 48-1-121(a)(2), Public Acts of 2001, Chapter 61, §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, §§203A, 205, and 215 of the Investment Advisers Act of 1940, §17(f)(2) of the Securities Exchange Act of 1934, 17 C.F.R. §240.10b-10, 17 C.F.R. §240.17a-3 through 17 C.F.R. §240.17a-5, 17 C.F.R. §240.17a-11, 17 C.F.R. §240.17f-2, 17 C.F.R. §275.204-2, and the FINRA Rules of Fair Conduct.

0780-04-03-.03 OIL AND GAS ISSUER-DEALERS.

(1) Oil and Gas Issuer Dealer Registration.

(a) All applications for initial registration as an oil and gas issuer-dealer shall contain the following unless waived by order of the ~~c~~Commissioner:

1. Form IN-0911, Application for Registration as an Oil and Gas Issuer-Dealer, containing all information and exhibits required by that ~~f~~Form;

2. A Consent to Service of Process and, if applicable, a Uniform Form of Corporate Resolution. Forms U-2 and U-2A are acceptable;

3. A nonrefundable filing fee of one hundred dollars ($100) by check made payable to the Tennessee Department of Commerce and Insurance; and

4. Such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) All applications for registration must be filed with the Division at its current published address.

(c) All applications become effective by operation of law thirty (30) days after the date stamped on the Form IN-0911 by the Divisionepartment of Commerce and Insurance or, in the event the application is incomplete, thirty (30) days after the date the application becomes complete, unless a proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A §48-1-110(f)(4), or the thirty (30) day period is waived in writing by the applicant.

(d) Abandonment.

1. The Division may determine that an application to register an oil and gas issuer-dealer has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Renewal of Registration.

(a) All registrations expire at midnight on December 31 of each year and must be renewed no later than ten (10) days prior to that date.

(b) All renewals shall contain the following:

1. The renewal form provided by the Division with all information and exhibits required by the form; and

2. A nonrefundable renewal fee of fifty dollars ($50) by check payable to the Tennessee Department of Commerce and Insurance.

(3) Amendments.

(a) The applicant shall notify the Division in writing of any changes in the information provided in the application within ten (10) days of occurrence.

Authority: T.C.A. §§48-1-102, 48-1-107, 48-1-110, 48-1-110(f), 48-1-111, 48-1-111(a), 48-1-112, (a)(2)(B), 48-1-112(f), 48-1-113, 48-1-115(f), 48-1-116(a), 48-1-118, Public Acts of 2001, Chapter 61, and §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, and §§201A, 205, and 215 of the Investment Advisers Act of 1940.

0780-04-03-.04 PERSONS DEEMED NOT TO BE BROKER-DEALERS.

(1) Associated Persons of an Issuer.

(a) An associated person of an issuer of securities shall not be deemed to be a broker-dealer by reason of his participation in the offer, sale, or transfer of the securities of such issuer if the associated person:

1. Is not subject to a statutory disqualification, as the term is defined in Section 3(a)(39) of the 1934 Act, at the time of his participation;

2. Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities;

3. Is not at the time of his participation an associated person of a broker-dealer; and

4. Meets the conditions of any one of the following subparts ~~[~~(1)(a)4.~~,~~(i), (1)(a)4.~~,~~(ii), or (1)(a)4.~~,~~(iii)~~]~~ of this Rule~~part~~:

(i) The associated person restricts his participation to transactions involving offers, sales, or transfers of securities.

(I) To a registered broker-dealer or an institutional investor;

(II) That are exempted from the registration requirements of the Act under T.C.A. §48-1-103(a)(11)~~,~~, or that are offered, sold, or transferred pursuant to transactions that are exempt from the registration requirements of the Act under T.C.A. §§48-1-103(b)(2)~~,~~, (b)(9), or (b)(10); or

(III) That are made pursuant to any of the events described in T.C.A. §48-1-102(15)(F).

(ii) The associated person meets all of the following conditions:

(I) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities;

(II) The associated person was not a broker-dealer, or an associated person of a broker-dealer, within the preceding twelve (12) months; and

(III) The associated person does not participate in selling an offering of securities for any issuer more than once every twelve (12) months other than in reliance on subparts (1)(a)4.(i) or (1)(a)4.(iii) of this ~~r~~Rule, except that for securities issued pursuant to SEC Rule 415 ~~(~~17 C.F.R. §230.415~~), under the 1933 Act,~~ the twelve (12) months shall begin with the last sale of any security included within one (1) SEC Rule 415 registration.

(iii) The associated person restricts his participation to any one (1) or more of the following activities:

(I) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; provided, however, that the content of such communication is approved by a partner, officer, or director of the issuer;

(II) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses are limited to information contained in a registration statement filed under the Act or other offering document; or

(III) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated T.C.A. §48-1-109 solely by reason of his participation in the offer, sale, or transfer of securities of the issuer if he does not meet the conditions specified in this ~~r~~Rule.

(c) Definitions. When used in this ~~r~~Rule:

1. The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:

(i) The issuer;

(ii) A corporate general partner of a limited partnership that is the issuer;

(iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

(iv) An investment adviser, registered under the Investment Advisers Act ~~of 1940~~ to an investment company registered under the Investment Company Act, ~~of 1940~~ which is the issuer.

2. The term "associated person of a broker-dealer" means any partner, officer, director, or branch manager of such broker-dealer (or the person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer, any agent of such broker-dealer, or any employee of such broker-dealer, except that any person associated with a broker--dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker-dealer in that state solely because such person is an issuer of securities or an associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this ~~r~~Rule.

(2) A retail or financing institution whose dealings in securities are limited to transactions for its own account with institutional investors or other retail or financing institutions in notes or other evidences of indebtedness secured by mortgages, deeds of trust, or agreements for the sale of real estate or personality, will not be deemed a broker-dealer if the entire mortgage, deed of trust, or agreement, together with all notes or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(3) The exclusions set forth herein shall not exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§48-1-102, 48-1-103, 48-1-109, 48-1-110(f), 48-1-115, 48-1-116, ~~and 48-1-116(a)~~48-1-121, §3(a)(39) of the Securities Act of 1933, and 17 C.F.R. §230.415.

0780-04-03-.05 EXEMPTIONS FROM INVESTMENT ADVISER REGISTRATION.

(1) The following persons shall be exempted from the registration requirements for investment advisers set forth in T.C.A. §48-1-109:

(a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or

(b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.

(2) (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this ~~r~~Rule.

(b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this ~~r~~Rule.

(3) This ~~r~~Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-~~116(a).~~ 21.

0780-04-03-.06 INVESTMENT ADVISER NOTICE FILINGS.

(1) A person who is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act and who is an investment adviser as defined by T.C.A. §48-1-102(10) shall make the following filings with the Division through the IARD by complying with the filing procedures of the IARD:

(a) An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser and shall contain the following:

1. A Form ADV, and all information and exhibits required by such ~~f~~Form, as submitted to the SEC; and

2. The appropriate notice filing fee as set forth in the Act unless the investment adviser has previously paid the appropriate investment adviser registration filing fee for the current registration period.

(b) A renewal investment adviser notice filing and the appropriate renewal fee as set forth in the Act shall be filed pursuant to the renewal procedures of the IARD for each successive calendar year as is necessary in order to sustain compliance with T.C.A. §48-1-109(c)(2).

(c) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent notice filing shall be set forth in an amendment to Form ADV and filed promptly with the Division through the IARD.

(2) The filings herein required shall constitute filings with the ~~C~~commissioner pursuant to T.C.A. §48-1-121(c) and shall be submitted to the Division through the IARD or submitted to the Division in a manner consistent with the transmittal of such filings to the SEC pursuant to a temporary or continuing hardship exemption as granted by the SEC.

(3) The filings ~~herein~~ required in subparagraphs (1)(a) and (1)(b) ~~above~~ of this Rule are deemed filed for purposes of T.C.A. §48-1-109(c)(2) and this ~~r~~Rule when they are complete. ~~-~~ These filings are deemed to be complete when all required information and fees have been received by the Division.

(4) A complete or incomplete investment adviser notice filing may be withdrawn by the investment adviser by submission of a withdrawal filing through the IARD.

(5) Abandonment of Incomplete Investment Adviser Notice Filings.

(a) The Division may determine that an incomplete notice filing by an investment adviser has been abandoned if:

1. The incomplete notice filing has been on file with the Division for more than one hundred eighty (180) days without becoming complete and no written communication has been received by the Division in connection with the notice filing during such time period; or

2. A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the investment adviser.

(b) Upon the determination that an incomplete notice filing has been abandoned, the Division shall, by Order of Abandonment, cancel the incomplete notice filing manually or in the IARD without prejudice and, within thirty (30) days of such ~~cancellation~~Order of Abandonment, send notice of such cancellation to the last known business address of the investment adviser.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-115, 48-1-116~~(a)~~, 48-1-121, Public Acts of 2001, Chapter 61, and §203 of the Investment Advisers Act of 1940, as amended by ~~,~~ §307(a) of the National Securities Markets Improvement Act of 1996~~, and Public Acts of 2001, Chapter 61~~.

0780-04-03-.07 INVESTMENT ADVISER CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person, within the meaning of T.C.A. §48-1-121(b)(~~2~~3) of the Act, for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to ~~do~~ commit an act or take any action, directly or indirectly, with respect to any funds or securities, unless:

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; ~~and~~

(b) 1. All such funds of such clients are deposited in one (1) or more bank accounts which contain only clients' funds;

2. Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

3. The investment adviser maintains a separate record for each such account which shows:

(i) tThe name and address of the bank where such account is maintained;,

(ii) tThe dates and amounts of deposits in and withdrawals from such account;, and

(iii) tThe exact amount of each client's beneficial interest in such account; and

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(d) Such investment adviser sends to each client, not less frequently than once every three (3) months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period; and

(e) Such investment adviser complies with the reporting requirements set forth under rule part (4)(a)2. of Rule 0780-04-03-.02(4)(a)2; and.

(f) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T.C.A. §48-1-109(c)(2).

(2) This rRule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the 1934 Act if (a) such broker-dealer is subject to and in compliance with SEC Rule 15c3-1 [Reg.(17 C.F.R. §240.15c3-1)] under the 1934 Act, or (b) such broker-dealer is a member of an exchange whose members are exempt from SEC Rule 15c3-1 [Reg. §240.15c3-1] under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled settlement practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(3) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirement of paragraph part (1)(b)3. of this rRule if such investment adviser:

(a) iIs registered or licensed as an investment adviser in the state in which the principal place of business of the investment adviser is located;

(b) iIs in compliance with the books and records requirements of the state in which the investment adviser maintains its principal place of business; and

(c) tThe provisions of paragraph part (1)(b)3. of this rRule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

(4) An investment adviser in this state that fully complies with the conditions set forth under subparagraphs (1)(a-ef) of this Rule may take or have custody of any funds or securities of any client.

(5) Any investment adviser that is not registered with the Division under T.C.A. §48-1-109(c)(2) that fully complies with SEC Rule 206(4)-2 ~~promulgated under the Investment Advisers Act~~ (17 C.F.R. §275.206(4)-2) may take or have custody of any funds or securities of any client.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Authority: T.C.A. §§48-1-109, 48-1-111, 48-1-115, 48-1-116, 48-1-121 ~~(a) and 48-1-121 (b);~~ Public Acts 1997, Chapter 164, §~~Section 7~~; §222 of the Investment Advisers Act of 1940, as amended by §304~~(a)~~ of the National Securities Markets Improvement Act of 1996; §15 of the Securities Exchange Act of 1934, 17 C.F.R. §240.15c3-1, and 17 C.F.R. §275.206(4)-2.

0780-04-03-.08 INVESTMENT ADVISER FINANCIAL AND DISCIPLINARY DISCLOSURE.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(a) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred ($500) from such client, six (6) months or more in advance; or

(b) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(2) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph (1)(b) of thise Rrule for a period of ten (10) years ~~form~~from the time of the event.

(a) A criminal or civil action in a court of competent jurisdiction in which the person:

1. Was convicted, pleaded guilty, or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action") and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

2. Was found to have been involved in a violation of an investment-related statute or regulation; or

3. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(b) Administrative proceedings before the SECecurities and Exchange Commission, any other federal regulatory agency, or any state agency (any of the foregoing being referred to hereafter as "Agency") in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities.

(c) Self-Regulatory Organization (SRO) proceedings in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars ($2,500); or otherwise significantly limiting the person's investment-related activities.

(3) The information required to be disclosed by paragraph (1) of this Rule shall be disclosed to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract.

(4) For purposes of this rRule:

(a) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(b) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(c) "Investment related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act [(7 U.S.C. §1 et seq.)] or fiduciary.)

(d) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.

(e) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(5) For purposes of calculating the ten (10) year period during which events are presumed to be material under paragraph (2), of this Rule, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal form from preliminary orders, judgements, or decrees lapsed.

(6) Compliance with paragraph (2) of this rRule shall not relieve any investment adviser from the disclosure obligations of paragraph (1) of thise rRule. cCompliance with paragraph (1) of thise rRule shall not relieve any investment adviser from any other disclosure requirement under the Act, these rRules, and regulations thereunder, or under any other federal or state law.

Authority: T.C.A. §§48-1-115, 48-1-116, 48-1-121, (b)(2) and 48-1-116(a); §§222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996, and; 17 C.F.R. §275.206(4)-4.

0780-04-03-.09 ADVERTISEMENT BY INVESTMENT ADVISERS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:

(a) wWhich refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser or;

(b) wWhich refers, directly or indirectly, to past specific recommendations of such investment adviser, which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one (1) year, if such advertisement and such list, if it is furnished separately:

1. sStates the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date;, and

2. cContains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof; "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

(c) wWhich represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his own decisions as to which securities to buy and sell, or when to buy and sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(d) wWhich contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) wWhich contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this ~~r~~Rule, the term ~~"~~advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one (1) person, or any notice or other announcement in any publication or by radio or television, which offers (a) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (b) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (c) any other investment advisory service with regard to securities.

Authority: T.C.A. §§48-1-115, 48-1-116, ~~(a) and~~ 48-1-121~~(b)~~, Public Acts of 1997, Chapter 164, ~~;~~ §§222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996, ~~;~~ and 17 C.F.R. §275.206(4)-1.

0780-04-03-.10 WRITTEN DISCLOSURE STATEMENTS BY INVESTMENT ADVISERS.

(1) General requirement. Unless otherwise provided in this ~~r~~Rule, an investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109 ~~(c(c)) of the Act~~ shall, in accordance with the provisions of this ~~r~~Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part ~~II~~ 2 of its Form ADV or a written document containing at least the information then so required by Part ~~II~~ 2 of Form ADV.

(2) Delivery.

(a) An investment adviser, except as provided in subparagraph (2)(b) of this Rule ~~,~~ shall deliver the statement required by this ~~section~~ subparagraph (2)(a) to an advisory client or prospective advisory client:

1. ~~n~~Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client~~;~~, or

2. ~~a~~At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(b) Delivery of the statement required by subparagraph (2)(a) of this Rule need not be made in connection with entering into a contract for impersonal advisory services as defined in the Rule.

(3) Offer to deliver.

(a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this ~~r~~Rule.

(b) The delivery or offer required by subparagraph (3)(a) of this Rule need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars ($200)~~;~~

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of two hundred dollars ($200) or more, an offer of the type specified in subparagraph (3)(a) of this Rule shall also be made at the time of entering into an advisory contract.

(d) Any statement requested in writing by an advisory client pursuant to an offer required by ~~this~~ paragraph (3) of this Rule must be mailed or delivered within seven (7) days of the receipt of the request.

(4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part ~~II~~ 2 of Form ADV may be omitted ~~form~~ from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5) Other disclosures. Nothing in this ~~r~~Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or these Rrules ~~thereunder~~ or other federal or state law to ~~disclosure~~ disclose any information to its advisory clients or prospective advisory clients not specifically required by this ~~r~~Rule.

(6) Sponsors of wrap fee programs.

(a) An investment adviser, registered or required to be registered pursuant to T.C.A. §48-1-109(c) of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program, shall in lieu of the written disclosure statement required by paragraph (1) of this ~~r~~Rule and in accordance with other provisions of this ~~r~~Rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Part 2A Appendix 1 ~~Schedule H~~ of Form ADV. Any additional information included in such disclosure should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(b) If the investment adviser is required under this paragraph (6) to furnish disclosure statements to clients or prospective clients of more than one (1) wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee programs ~~-~~ or programs any information required by ~~Schedule H~~Form ADV Part 2A Appendix 1 that is not applicable to clients or prospective clients of that wrap fee program or programs.

(c) An investment adviser need not furnish the written disclosure statement required by subparagraph (6)(a) of this ~~r~~Rule to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(7) Definitions. For purposes of this ~~r~~Rule:

(a) "~~c~~Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

1. ~~b~~By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

2. ~~t~~Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

3. ~~a~~Any combination of the foregoing services.

(b) "~~e~~Entering into", in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(c) "~~w~~Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(8) An investment adviser that fails to make written disclosure statements as required by this ~~r~~Rule shall be deemed to have engaged in a dishonest and unethical practice in the securities business as provided under T.C.A. §48-1-112(a)(2)(G).

Authority: T.C.A. §§48-1-109, 48-1-112, ~~(a)(2)(G) and~~ 48-1-115, 48-1-116, ~~(a);~~ §222 of the Investment Advisers Act of 1940, as amended by §304~~(a)~~ of the National Securities Markets Improvement Act, and~~;~~ 17 C.F.R. §275.204-4.

0780-04-03-.11 PERSONS DEEMED NOT TO BE "AGENTS".

(1) An individual associated person of a broker-dealer shall be exempt from the definition of "agent" as defined under T.C.A. §48-1-102(3) if such individual associated person effects any of the two (2) types of transactions in securities described in paragraph (2) of this ~~r~~Rule for a customer in this state and satisfies the following conditions:

(a) ~~s~~Such individual associated person is not ineligible to register in this state for any reason other than such a transaction in securities;

(b) ~~s~~Such individual associated person is registered with a securities association registered under the 1934 Act and is also registered in at least one (1) state; and

(c) ~~t~~The broker-dealer with which such individual person is associated is appropriately registered in this state.

(2) For purposes of this ~~r~~Rule, the following are the two (2) types of transactions referred to in paragraph (1):

(a) ~~a~~A transaction that is effected on behalf of a customer who:

1. ~~m~~Maintained an account with the broker-dealer employing the associated person for thirty (30) days prior to the date of the transaction~~;~~, and

2. ~~w~~Was assigned to such individual associated person for fourteen (14) days prior to the day of the transaction and such individual associated person is registered with the state in which the customer was resident or was present for at least thirty (30) consecutive days during the one (1) year period prior to the day of the securities transaction; or

(b) ~~a~~A transaction that is:

1. ~~e~~Effected on behalf of a customer who maintains an account with the broker-dealer for thirty (30) days prior to the date of the securities transactions; and

2. ~~e~~Effected during the period, beginning on the date on which such individual associated person of a broker-dealer files an application for agent registration in this state and ending on the earlier of:

(i) Sixty (60) days after the date on which the application is filed; or

(ii) tThe date on which this state notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

For purposes of ~~subparagraph~~ part (2)(a)2. of this rRule, each of up to three (3) individuals, who are associated persons of a broker-dealer and who are designated by such broker-dealer to effect securities transactions for a customer in this state during the absence or unavailability of the principal associated person for a customer, may be treated as an associated person to which such customer is assigned.

(3) An exemption from the definition of "agent" claimed on the basis of the transaction set forth in subparagraph (2)(a) of this Rule shall not be effective if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state and the associated person of the broker-dealer fails to file an application for agent registration in this state pursuant to T.C.A. §§48-1-109 and 48-1-110 not later than ten (10) business days after the later of:

(a) tThe date of the transaction;

(b) tThe date of discovery of the customer's presence in this state for thirty (30) or more consecutive days; or

(c) tThe change in the customer's residence.

(4) The exemptions set forth herein shall not exempt any person from the operation of the antifraud provision of the Act set forth at T.C.A. §48-1-121.

Authority: T.C.A. §§48-1-102, 48-1-109, 48-1-110, 48-1-115, 48-1-116, 48-1-121, and ~~2(2) and 48-1-116(a);~~ §15 of the Securities and Exchange Act of 1934, as amended by §103 (a)(~~2~~) of the National Securities Markets Improvement Act of 1996.

0780-04-03-.12 DEFINITION OF "CLIENT OF AN INVESTMENT ADVISER".

(1) Preliminary note. This rRule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of T.C.A. §48-1-102(10)(E)(ii) and 48-1-102(10)(F) of the Act.

(2) General. For purposes of T.C.A. §§48-1-102(10)(E)(ii) and 48-1-102(10)(F), the following are deemed a single client:

(a) A natural person, and:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries; or

4. All trusts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries;

(b) 1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in ~~paragraph~~ part (2)(a)4.~~,~~ of this ~~section~~Rule), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partner, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

2. Two or more legal organizations referred to in ~~paragraph~~part (2)(b)1. of this ~~section~~ Rule that have identical owners.

(3) Special Rules. For purposes of this ~~r~~Rule:

(a) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization~~;~~, provided, however, that the determination that an owner is a client will not affect the applicability of this ~~section~~ subparagraph (3)(a) with regard to any other owner;

(b) An owner need not ~~to~~ be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(d) Any person for whom an investment adviser provides investment advisory services without compensation need not ~~to~~ be counted as a client; and

(e) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are residents in this state; an investment ~~advisor~~ adviser that has its principal office and place of business in this state must count all clients.

(4) Holding Out. _Any investment adviser relying on this Rule ~~section~~ ~~paragraph~~ shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of subparagraph (1)(b) of this ~~r~~Rule 0780-04-03-.05~~(1)(b)~~, solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the ~~Securities~~ 1933 Act ~~of 1933~~.

Authority: T.C.A. §§48-1-102, 48-1-115, ~~48-1-102(7),~~ 48-1-116~~(a)~~~~;~~, §222 of the Investment Advisers Act of 1940, as amended by §304~~(d)~~ of the National Securities Markets Improvement Act of 1996, and~~;~~ 17 C.F.R. §275.203(b)(3)-1.

0780-04-03-.13 CASH PAYMENTS FOR CLIENT SOLICITATIONS.

(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under T.C.A. §48-1-121(b)(2), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(a) ~~t~~The solicitor is not a person:

1. ~~s~~Subject to an order issued by the ~~C~~commissioner under T.C.A. §48-1-112(a) of the Act~~;~~ ~~or~~

2. ~~c~~Convicted of any felony or any misdemeanor within the previous ten (10) years ~~of any felony or misdemeanor~~ involving conduct described in T.C.A. §48-1-112(a)(2)(C)~~;~~ ~~or~~

3. ~~w~~Who has been found by the ~~C~~commissioner to have engaged, or has been convicted of engaging, in any of the conduct specified in T.C.A. §§48-1-121~~(C)~~, 48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or has materially aided in the action in violation of T.C.A. §§48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or 48-1-121;

4. ~~s~~Subject to an order, judgment, or decree described in T.C.A. §48-1-112(a)(2)(D) of the Act; or

5. ~~d~~Described in SEC Rule 206(4)-3(a)(1)(ii) (17 C.F.R. §275.206(4)-3(a)(1)(ii)) ~~Regulation §275.206(4)-3(a)(1)(ii)as promulgated under the Investment Advisers Act; and~~

(b) ~~s~~Such cash fee is paid pursuant to a written agreement to which the adviser is a party; ~~and~~

(c) ~~s~~Such cash fee is paid to a solicitor:

1. ~~w~~With respect to solicitation activities for the provision of impersonal advisory services only; ~~or~~

2. ~~w~~Who is:

(i) ~~a~~A partner, officer, director, or employee of such investment adviser; or

(ii) ~~a~~A partner, officer, director, or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

3. ~~o~~Other than a solicitor specified in ~~paragraph~~ parts (1)(c)~~-~~1. or (1)(c)2. ~~above~~ of this Rule if all of the following conditions are met:

(i) The written agreement required by subparagraph (1)(b) of this ~~r~~Rule:

(I) ~~d~~Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received thereof;

(II) ~~c~~Contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these ~~r~~Rules ~~thereunder or~~ of the Investment Advisers Act and the rules promulgated thereunder, whichever is applicable; and~~-~~

(III) ~~r~~Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by ~~r~~Rule 0780-04-03-.10 or SEC ~~r~~Rule 204-3 (17 C.F.R. §275.204-3)~~,~~ as applicable, and a

separate written disclosure statement described in paragraph (2) of this ~~r~~Rule;~~,~~

(ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document; and~~,~~

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to ~~paragraph~~ subpart (1)(c)3.(ii) of this ~~r~~Rule shall contain the following information:~~,~~

(a) The name of the solicitor;

(b) The name of the investment adviser;

(c) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(d) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(e) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(f) 1. The amount, if any, the client will be charged for the cost of obtaining his account in addition to the advisory fee;~~,~~ and

2. The differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(3) Nothing in this ~~r~~Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(4) For purposes of this ~~r~~Rule:

(a) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(b) "Client" includes any prospective client.

(c) "Impersonal advisory services" means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

(5) The investment adviser shall retain a copy of each written agreement required by subparagraph (1)(b) of this rRule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of rRule 0780-04-03-.02(3).

(6) The investment adviser shall retain a copy of each acknowledgement and solicitor disclosure document referred to in paragraph subpart (1)(c)3.(ii) of this Rule as part of the records required to be kept under T.C.A. §48-1-111(a) and paragraph (3) of rRule 0780-04-03-.02(3).

(7) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of paragraphs (5) or (6) of this rRule if such investment adviser:

(a) iIs registered or licensed as an investment adviser in the state in which it maintains its principal place of business;,

(b) iIs in compliance with applicable books and records requirements of the state in which it maintains its principal place of business;, and

(c) tThe provisions of paragraphs (5) or (6) of this rRule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

(8) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, or coordinate the activities of the investment adviser.

Authority: T.C.A. §§48-1-111(a), 48-1-112, 48-1-115, 48-1-116(a), and 48-1-121, Public Acts of 1997, Chapter 164, 17 C.F.R.(b)(2); §275.204-3, and 17 C.F.R. §-275.206(4)-3.

0780-04-03-.14 AGENCY CROSS TRANSACTIONS FOR INVESTMENT ADVISORY CLIENTS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. §48-1-121(b)(2) of the Act for any investment advisor adviser acting as principal for his own account to:

(a) Knowingly to sell any security to or to purchase any security from a client without:

1. dDisclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting;, and

2. oObtaining the consent of the client to such transaction; or

(b) Knowingly to effect any sale or purchase of any security for the account of such client, while acting as broker-dealer for a person other than such client, without:

1. dDisclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting;, and

2. oObtaining the consent of the client to such transaction.

The prohibitions of this paragraph (1) shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

(2) An investment adviser registered under T.C.A. §48-1-109 of the Act, or a person registered as a broker-dealer under T.C.A. §48-1-109 of the Act and controlling, controlled by, or under

common control with an investment adviser registered under T.C.A. §48-1-109 ~~of the Act,~~ shall be deemed not to be in violation of the provisions of this ~~r~~Rule and T.C.A. §48-1-121(b)(2) ~~of the Act~~ in effecting an agency cross transaction for an advisory client, if:

(a) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this ~~r~~Rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure ~~that~~ with respect to agency cross transactions for which the investment adviser or such other person will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(b) The investment adviser, or any other person relying on this ~~r~~Rule, sends to each client a written confirmation at or before the completion of each such transaction, which confirmation includes:

1. ~~a~~A statement of the nature of such transaction;

2. ~~t~~The date such transaction took place;

3. ~~a~~An offer to furnish upon request, the time when such transaction took place; and

4. ~~t~~The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this paragraph (2) in connection with the transaction; ~~.~~

(c) The investment adviser, or any other person relying on this ~~r~~Rule, sends to each client, at least annually, and with or as part of any written statement or summary of such account form the investment adviser of such other person:

1. ~~a~~A written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary; ~~,~~ and

2. ~~t~~The total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this ~~r~~Rule in connection with such transactions during such period;

(d) Each written disclosure and confirmation required by this ~~r~~Rule includes a conspicuous statement that the written consent referred to in subparagraph (2)(a) of this ~~r~~Rule may be revoked at any time by written notice to the investment adviser, or any other person relying on this paragraph, from the advisory client; and

(e) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

(3) For purposes of this ~~r~~Rule, the term "agency cross transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, acts as broker-dealer for both such advisory client and for another person on the other side of the transaction.

(4) For purposes of ~~paragraph~~ part (2)(b)4. of this ~~r~~Rule, the written confirmation referred to in such ~~r~~Rule may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer if:

(a) ~~i~~In the case of a purchase, neither the investment adviser nor any other person relying on paragraph (2) was participating in a distribution~~;~~, or

(b) ~~i~~In the case of a sale, neither the investment adviser nor any other person relying on this paragraph was participating in a tender offer.

(5) This ~~r~~Rule shall not be construed as relieving in any way the investment adviser or another person relying on this ~~r~~Rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may imposed by T.C.A. §48-1-121(b)(2) ~~of the Act~~ or by other applicable provisions of the Act.

Authority: T.C.A. §§48-1-109, 48-1-115, 48-1-116, 48-1-121, Public Acts of 1997, Chapter 164, §7, ~~(b)(2) and 48-1-116(a);~~ §222 of the Investment Advisers Act of 1940, as amended by §304~~(a)~~ of the National Securities Markets Improvement Act of 1996~~;~~ and 17 C.F.R. §275.206(3)-2.

0780-04-03-.15 EXEMPTION FROM BROKER-DEALER REGISTRATION FOR CERTAIN CANADIAN BROKER-DEALERS.

(1) Prior to effecting any securities transaction pursuant to the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g), a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:

(a) Initial exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;

3. Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

4. Copy of the disclosure which will be made to customers that the Canadian broker-dealer is not subject to the full regulatory requirements of the Act;

5. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

6. Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to part (1)(a)5. ~~herein~~of this Rule;

7. Form U-2 Uniform Consent to Service of Process;

8. The appropriate fee as set forth in the Act; and

9. Such other information as the Division may request from a particular Canadian broker-dealer to determine eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).

(2) Each exemption notice filing expires each December 31 unless timely renewed. An exemption notice filing is timely renewed for the next successive calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and on or before the immediately following December 31:

(a) Renewal exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

3. The appropriate fee as set forth in the Act; and

4. Such other information as the Division may request from a particular Canadian broker-dealer to determine continuing eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-1-109(g).

(b) Exemption notice filings for which incomplete renewal exemption notice filings have been submitted will expire at the relevant December 31 unless completed by the filer on or before that December 31.

(3) Abandonment.

(a) The Division may determine that an incomplete initial exemption notice filing has been abandoned if:

1. An incomplete filing has been on file with the Division for more than one hundred eighty (180) days without becoming completed and no written communication has been received by the Division from the filer in connection with the filing during such period; or

2. A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the filer.

(b) Upon the determination that an incomplete initial exemption notice filing has been abandoned, the Division may, by Order of Abandonment, cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail ~~a notice of the cancellation~~the Order of Abandonment to the last known business address of the filer.

(4) Termination and Withdrawal.

(a) A Canadian broker-dealer may terminate its initial exemption notice filing or renewal exemption notice filing by filing a written request for termination directly with the Division. Annual fees previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.

(b) An incomplete initial exemption notice filing, a renewal exemption notice filing, or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.

(c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. §48-1-109(g) shall immediately notify the Division in writing of the cause of such ineligibility and shall simultaneously, as is appropriate, request a termination or withdrawal pursuant to subparagraphs (4)(a) or (4)(b) ~~hereinof~~ this Rule.

(5) The filings herein required shall constitute filings with the ~~C~~commissioner pursuant to T.C.A. §48-1-121(c).

Authority: T.C.A. §§48-1-102, 48-1-109(g), 48-1-112, 48-1-115, 48-1-116, 48-1-121, and 48-1-124(e). ~~and 48-1-116(a).~~

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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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 2/20/15 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 2/20/15

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of the Dept. of Commerce & Insurance

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Subscribed and sworn to before me on: 2/20/15

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/16

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

March 11, 2015
Date

Department of State Use Only

Filed with the Department of State on: 3/16/15

Effective on: 6/14/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Standard of Identity: Honey
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 53-1-205
EFFECTIVE DATES:	June 22, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This is the first standard of identity for honey. Legislation regarding honey, previously codified at Title 53, Chapter 15 of the Tennessee Code, was repealed effective July 1, 2014.

Public Hearing Comments

The Department of Agriculture held a public hearing on November 17, 2014. Oral comments received during the hearing and written comments from constituents are summarized below along with the Department's response.

Comment:

Mr. Richard Brickner indicated that he was in favor of a standard of identity for honey but submitted his concern that the standard as written does not indicate how it will be applied or how it wifi affect various stakeholders and producers of honey. He also set forth his concerns that the standard would grow in scope and that some keepers would not be able to pay for required testing.

Response:

The Department appreciates Mr. Brickner's support. The Department strives to promulgate regulations that are minimalistic in carrying the Department's programs and that are the least burdensome to the Tennessee public.

This standard will be applied through the Tennessee Food, Drug and Cosmetic Act and the Department's manufactured food sampling protocols for regulatory enforcement, applicable to constituents who engage in the production and/or wholesale or retail sale of honey. Products that violate the standard of identity will be considered adulterated or misbranded. Under these protocols private citizens will not be required to pay for sample testing, nor will samples submitted by private citizens be accepted by the Department for testing.

Comment:

Mr. George Martin offered his support for the standard of honey.

Response:

The Department appreciates Mr. Martin's support for this rule.

Comment:

Mr. Jim Primus offered his support of Mr. Brickner's comments above. Mr. Primus also submitted his concern that the standard is vague in its requirement that honey not be heated or processed to an extent that its essential compound composition is changed. Mr. Primus suggested that heating be allowed to specific temperature limits.

Response:

The Department makes the same response as noted above for Mr. Brickner's comments.

Regarding specific temperature limits for heating honey, the Department's prime concern for this issue is to ensure that no valuable constituent is omitted or abstracted from honey such that it would be deemed adulterated. Prolonged exposure of honey to temperatures as low as 106 degrees Fahrenheit can degrade valuable constituents through accumulation of hydroxymethylfurfural and reduction of volatile compounds and enzyme activities. Conversely, flash heating of honey to temperatures as high as 160 degrees can be useful to kill yeast spores and slow granulation without impairing or changing the quality of the honey. This relationship between the temperature and duration of heat to which honey is exposed makes difficult an exact designation of temperature to which honey may be exposed without omitting its valuable constituents. The matter is made more difficult where different types of honey react differently to the same heat exposure.

Ultimately, the Department is unaware of any national or international organization that has designated an exact temperature to which honey may be heated and finds that the language in this rule—that honey "not be heated or processed to such an extent that its essential composition is changed or its quality is impaired"—is best suited to ensure the authenticity of honey.

Comment:

Mr. Howard Kerr from Maryville, Tennessee inquired as to the impetus of the Department in promulgating this

standard of identity for honey. Mr. Kerr submitted his primary concern that this standard be drafted to stop manufacturers from mixing corn syrup with honey and selling the mix as honey. To that end, Mr. Kerr stated both support for the standard and various concerns as follow.

Mr. Kerr stated his concern that the standard as written focuses primarily on floral sources that originate in Florida and southern Georgia and not in Tennessee. Mr. Kerr would like the standard to address a standard for honey from Tennessee floral sources. Mr. Kerr also stated a concern if the standard regulates the mixing of two or more flavors of honey.

Mr. Kerr set forth his concern regarding the standard's essential composition requirement that honey not have begun to ferment or effervesce. Mr. Kerr maintains that honey with a high water content, e.g. above 18% moisture, may ferment but that the honey can be warmed to kill the yeast and not change the essential! nature of the honey. Nonetheless, he also noted his concurrence that this fermentation is rare in honey below 18% moisture and his support for requiring honey's essential composition to be below 18% moisture, as opposed to the standard's requirement of less than 20% moisture.

Like Mr. Primus, Mr. Kerr suggested that the standard's requirement that honey not be heated so as to change its essential composition be prescribed by an exact temperature regulation.

Mr. Kerr submitted a concern with the standard's requirement that no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. Mr. Kerr maintained that producers often remove pollen as a source of nucleation and that disallowing pollen's removal will subject those producers to greater granulation of their product prior to sale.

Mr. Kerr suggested that the standard not require label designations for different flavors of honey.

Mr. Kerr suggests addition of "cream honey" as a style of honey.

Mr. Kerr would like explanation of the process for submitting samples of retail honey for testing, including the tests the sample will undergo, the costs of that testing, and identification of the parties responsible for payment of the testing.

Response:

The Department's prime impetus for this rule, consistent with Tenn. Code Ann. §53-1-205, is to promulgate a standard of identity for honey that will promote honesty and fair dealing in the interest of consumers.

Regarding the rule's inclusion of floral sources that originate in Florida and Georgia, this standard is meant to define honey generally and not honey that is produced exclusively from Tennessee floral sources. Additionally, as far as the Department is aware, all Tennessee Varietal honeys fall within the normal standard definition of honey as stated in the rule. The rule does not regulate the mixing of two or more authentic honeys, so long as the mixed product is otherwise honey as defined in the rule.

Regarding fermentation of honey, once fermentation begins, ethanol and carbon dioxide is formed, and the product becomes MEAD and is not suitable for use as table honey. The ethanol in the presence of oxygen may form acetic acid and water, resulting in a sour taste. Fermented honey can sometimes be reclaimed by heating it up to 150 degrees Fahrenheit for a short time. However, heating the honey in this manner typically only stops the fermentation and evaporates some of the off-flavor. Flash heating will not reverse the process of fermentation, and consequently it is not recommended for honey that is to be sold as authentic honey. Flash heating can be used earlier in production to kill yeasts so that the honey does not ferment, but this process must be carefully controlled so as not to change the honey's essential composition or impair its quality, as discussed above.

Regarding the 20% moisture standard in the rule, the Department is aware of moisture's correlation with fermentation of honey and appreciates Mr. Kerr's concern for limiting instances where honey may ferment. However, the 20% moisture standard promulgated by the Department is already more restrictive than other accepted honey standards. Ultimately, moisture content of honey is directly related to variables of temperature and humidity and their effects on the bee hive. A 20% moisture content standard is best suited to allow a margin for these variables' effects and not to constrain industry production of honey while also balancing concerns for fermentation and the production of authentic honey.

Regarding specific temperature limits for heating honey, the Department makes the same response as noted previously.

Regarding pollen removal, the Tennessee Food, Drug, and Cosmetic Act provides that "[flood shall be deemed to be adulterated if any valuable constituent has been, in whole or in part, omitted or abstracted from the food." Pollen is a valuable nutritional component of honey and is expected by the consumer to be present, international standards for honey concur. Therefore, the rule's prohibition against removing pollen from honey-absent its removal as an unavoidable consequence in the removal of foreign matter—is appropriate.

Regarding label requirements for flavors of honey, under the rule flavored honey—i.e. honey to which a flavoring or spice other than honey has been added—must be designated as such in the food name of the product. This rule is necessary to guard against products other than authentic honey being sold to Tennessee consumers as simply "honey."

Regarding "cream honey" as a proposed style of honey, creamed honey is a form of very fine crystalline honey and is covered under the rule as stated—"'Honey' which is honey in liquid or crystalline state or a mixture of the two." Therefore, creamed honey can be labeled and sold as "honey." However, if flavorings are added, ingredients must be designated in the food name as discussed above and listed on the label as with any food product with more than one ingredient.

Regarding the process of submitting samples and testing protocols, the Department makes the same response as noted previously.

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

Beekeepers who wish to produce honey and businesses that wish to process, wholesale, and/or retail honey will be affected by these rules, but will not bear the cost of compliance testing under the rule.

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

Approximately 30 honey manufacturers and 3,850 beekeepers are registered with the Department and/or have certified facilities in Tennessee.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under other food safety laws.

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

This rule is intended to clarify a standard of identity for authentic honey purchased in Tennessee. It is intended that greater clarity on what constitutes authentic honey will lend to greater consumer understanding and confidence in honey and honey products they purchase in Tennessee. Businesses will be impacted by associated costs to ensure that "honey" they sell complies with this standard or is properly labeled as a honey product, e.g. a flavored honey.

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

Less burdensome regulations for a standard of identity for honey are not possible because of the number of different varieties of honey and their unique compound compositions.

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

This rule is consistent with the authority of Tenn. Code Ann. §53-1-205, to promulgate standards of identity for food that promote honesty and fair dealing in the interest of consumers—in this case, that honey labeled and purchased as "honey" is actually authentic honey. It is also consistent with the Tennessee Food, Drug and Cosmetic Act, Tenn. Code Ann. §53-1-104, that deems adulterated any food product where a valuable constituent has been omitted from the food, any substance has been substituted for the food, or any substance has been added to the food so as to increase its bulk or weight or to reduce its quality.

Each of these state counterparts is consistent with the federal Food, Drug and Cosmetic Act, at 21 U.S.C.A. §§ 341, 342.

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

Exemption of small businesses from the requirements of this rule would compromise honesty and fair dealing in the interest of consumers in that labeling requirements for the same product would be inconsistent across Tennessee commerce.

Impact on Local Governments

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

There will be no expected impact on local governments.

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Sequence Number: 03-18-15
Rule ID(s): 5897
File Date: 3/24/15
Effective Date: 6/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

___ Amendment
_x_ 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**
0080-04-12	Standard of Identity - Honey
Rule Number	**Rule Title**
0080-04-12-.01	Purpose
0080-04-12-.02	Definitions
0080-04-12-.03	Essential Composition and Quality Factors
0080-04-12-.04	Labeling

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Chapter 0080-04-12
Standard of Identity – Honey

0080-04-12.-01 Purpose

This standard applies to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption and to all honey packed, processed or intended for sale in bulk containers as honey, that may be repacked for retail sale or for sale or use as an ingredient in other foods.

Authority: T. C. A. § 53-1-205

0080-04-12-.02 Definitions

(1) "Honey" means the natural food product resulting from the harvest of nectar by honeybees and the natural activities of the honeybees in processing nectar. It consists essentially of different sugars, predominantly fructose and glucose as well as other substances such as organic acids, enzymes and solid particles derived from honey collection. The color of honey can vary from nearly colorless to dark brown. The consistency can be fluid, viscous or partially to completely crystallized. The flavor and aroma vary, but are derived from the plant's origin.

(2) "Blossom Honey" or "Nectar Honey" is the honey which comes from nectars of plants.

(3) "Honeydew Honey" is the honey which comes mainly from excretions of plant sucking insects (Hemiptera) on the living parts of plants or secretions of living parts of plants.

Authority: T. C. A. § 53-1-205

0080-04-12-.03 Essential Composition and Quality Factors

(1) A product sold or offered for sale as honey shall not have added to it any food additives, as defined in T.C.A. § 53-1-102(15), nor shall any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. Honey shall not be heated or processed to such an extent that its essential composition is changed or its quality is impaired. Chemical or biochemical treatments shall not be used to influence honey crystallization.

(2) Moisture Content – No water may be added to honey in the course of extraction or packing for sale or resale as honey. Honey shall not have a moisture content exceeding 20%.

(3) Sugars Content.

(a) The ratio of fructose to glucose shall be greater than 0.9.

(b) Fructose and Glucose (Sum of Both) shall not be less than 60g/100g.

(c) The Maltose content shall not exceed 10%.

(d) The sucrose content shall not be more than 5g/100g with the following exceptions:

1. Alfalfa (Medicago sativa), Citrus spp., False Acacia (Robinia pseudoacacia), French Honeysuckle (Hedysarum), Menzies Banksia (Banksia menziesii), Red Gum (Eucalyptus camaldulensis), Leatherwood (Eucryphia lucida), Eucryphia milligani – not more than 10g/100g.

2. Lavender (Lavandula spp) and Borage (Borago officinalis) – not more than 15g/100g.

(e) There shall be no oligosaccharides indicative of invert syrup.

(4) The absolute value of Carbon Stable Isotope Ratio Analysis (CSIRA) shall be more negative than -20.0.

(5) CSIRA Internal Standard Procedure with a protein value minus honey value shall not be more negative than -1.0.

Authority: T. C. A. § 53-1-205

0080-04-12-.04 Labeling

(1) Products conforming to the standard of identity as adopted in this rule shall be designated "honey". Foods containing honey and any flavoring, spice or other added ingredient or if honey is processed in such a way that a modification to honey occurs that materially changes the flavor, color, viscosity or other material characteristics of pure honey, then such foods shall be distinguished in the food name from honey by declaration of the food additive or modification.

(2) Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic, physicochemical and microscopic properties corresponding with that origin.

(3) Where honey has been designated according to floral or plant source paragraph (2), then the common name or the botanical name of the floral source shall be used in conjunction with or joined with the word "honey".

(4) Honey may be designated by the name of the geographical or topographical region if the honey was produced exclusively within the area referred to in the designation.

(5) The styles of honey identified in subparagraphs (6)(b) and (c) shall be declared on packaging labeling as "Comb Honey", "Cut Comb in Honey", "Honey with Comb" or "Chunk Honey" as appropriate.

(6) Honey may be designated according to the following styles:

(a) "Honey" which is honey in liquid or crystalline state or a mixture of the two;

(b) "Comb Honey" which is honey stored by bees in the cells of freshly built broodless combs and which is sold in sealed whole combs or sections of such combs;

(c) "Cut Comb in Honey", "Honey with Comb" or "Chunk Honey" which is honey containing one or more pieces of comb honey.

Authority: T. C. A. § 53-1-205

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 02/18/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/23/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 11/17/2014

Date: Feb. 18, 2015

Signature: Julius T. Johnson

Name of Officer: Julius T Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: 02/18/2015

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/11/2017

JOYCE M. JACKSON NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015
Date

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Filed with the Department of State on: 3/24/15

Effective on: 6/22/15

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Retail Food Store Sanitation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 53-8-204(3)
EFFECTIVE DATES:	June 25, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules are constructed on a national model for risk-based inspection and science-based sampling of the retail food supply. Promulgation of these rules will make Tennessee's retail food safety program more robust and consistent with the majority of other states.

Public Hearing Comments

The Department of Agriculture held a public hearing on October 28, 2014. K. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-04-09 Retail Food Store Sanitation. No questions or comments on the rule were presented from the public during the hearing.

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), ail agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

Retail food stores and food service establishments located within retail food stores will bear the cost of and/or directly benefit from the proposed rule.

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

Approximately 9,590 retail establishments in Tennessee will be subject to the proposed rule,

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, record keeping and other administrative costs may be increased for small businesses due to initial training and development of policies and programs required under these rules. Retailers that operate in states other than Tennessee, however, will likely not be impacted where those businesses have already developed similar policies and programs for other states operating under the 2009 Food Code.

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

This rule is intended to standardize the requirements of retail food stores and food service establishments within retail food stores in a manner that will ensure their foods offered for public consumption in Tennessee are safe, in accordance with Tenn. Code Ann. §53-8-202. Businesses will be impacted by the initial cost of training current employees to comply, much the same as is done to comply with current rules. As the new rules become the standard operating procedure for the regulated businesses, the new rules should not impact the overall cost of operations.

Promulgation of this rule also brings Tennessee into a more uniform approach to regulating these businesses, as adopted by sister states using the 2009 Food Code developed by the Conference for Food Protection and published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration. This shared approach benefits the public by a common approach to preventing food borne illness outbreaks and a streamlined response to such outbreaks when cooperating with other states.

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:
Less burdensome regulations are not available to accomplish the desired level of uniformity with other states inspecting food establishments using the 2009 Food Code.

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

This rule is largely a reconstruction of the 2009 Food Code with minor variations tailored for Tennessee enforcement, and will resemble greatly a similar rule promulgated by the Tennessee Department of Health for inspection of food service establishments not in retail food stores. The rule is consistent with the authority of the department under Tenn. Code Ann. §53-8-204, to adopt all or part of the Food Code. This rule is a component outcome that may be traced in part to federal initiatives, e.g. Executive Order No. 13100 and 21 U.S.C.A. §2104, which call for development of a comprehensive food safety system through promotion of partnerships among the states and between them and the federal government.

As a result, portions of this rule mirror aspects of the Federal Food, Drug & Cosmetic Act, codified at 21 U.S.C.A. §301, et seq., and its associated regulations, e.g. as they relate to hazard analysis and risk-based preventive controls.

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

Exemption of small businesses from the requirements of this rule would compromise its intent to ensure and standardize the state's food safety program with that of other states and the federal government.

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 may require greater involvement and time commitments of county health department inspectors in Davidson, Knox, and Shelby counties, which may contract with the department for implementation of the rule in those jurisdictions.

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Sequence Number: 03-27-15
Rule ID(s): 5902
File Date: 3/27/15
Effective Date: 6/25/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer and Industry Services
Contact Person:	Jay Miller
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Revision Type (check all that apply):

X 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**
0080-04-09	Retail Food Store Sanitation
Rule Number	**Rule Title**
0080-04-09-.01	Definitions
0080-04-09-.02	Management and Personnel
0080-04-09-.03	Food
0080-04-09-.04	Equipment, Utensils, and Linens
0080-04-09-.05	Water, Plumbing, and Waste
0080-04-09-.06	Physical Facilities
0080-04-09-.07	Poisonous or Toxic Materials
0080-04-09-.08	Compliance and Enforcement

Chapter 0080-04-09 Retail Food Store Sanitation is amended by deleting the chapter in its entirety and substituting instead the following language so that, as amended, the chapter shall read:

Chapter 0080-04-09
Retail Food Store Sanitation

0080-4-9-.01 GENERAL PROVISIONS.

(1) For purposes of this Chapter:

(a) "Approved" means accepted by the commissioner.

(b) "Bulk food" means processed or unprocessed food in aggregate containers, from which the consumer can withdraw a desired quantity.

(c) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.

(d) "Commissioner" means the Commissioner of the Tennessee Department of Agriculture or his duly authorized agent.

(e) "Contamination" means the act or process of rendering or potentially rendering unfit for use.

(f) "Corrosion-resistant materials" means those materials that maintain acceptable sanitary surface characteristics under the prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(g) "Cross-contamination" means the act or process of rendering unfit or potentially rendering unfit the use of food as a result of the introduction of pathogens, adulteration, or improper handling.

(h) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish that residue can be effectively removed by normal cleaning methods.

(i) "Employee" means the permit holder, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food store.

(j) "Equipment" means items other than utensils used in the storage, preparation, display, and transportation of food, such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers, and similar items used in the operation of a retail food store. The term does not include fork lift trucks or dollies.

(k) "Extensive remodeling" means changing seating capacity from 16 seats or less to more than 16 seats; or the alteration of walls in food preparation or utensil washing areas; or the increase or decrease of floor size.

(l) "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

(m) "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces normally in contact with food.

(n) "Food service establishment" means any establishment, place or location, whether permanent, temporary, seasonal or itinerant, where food is prepared and the public is offered to be served, or is served, food, including but not limited to, foods, vegetables, and/or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, and sliced watermelon, ice balls, and/or water mixtures. The term includes any such places regardless of whether there is a charge for the food. The term does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, vending machines, or supply vehicles. The term also does not include any such establishment, place or location, whether permanent, temporary, seasonal or itinerant, which is located west of the Ben Brown Bridge and east of the Lascassas School in Lascassas, Tennessee. Food service establishments shall not include grocery stores which may, incidentally make infrequent, casual sales of uncooked foods for consumption on the premises, or any

establishment whose primary business is other than food service, which may, incidentally, make infrequent, casual sales of coffee or prepackaged foods, or both, for consumption on the premises. "Infrequent casual sales" means sales not in excess of fifty dollars ($50.00) per day on any particular day, for the purposes of the preceding sentence.

(o) "Hermetically-sealed container" means a container which is designed and intended to be secure against the entry of microorganisms, and which maintains the commercial sterility of its contents after processing.

(p) "Imminent health hazard" means any condition, deficiency, or practice which, if not corrected, is very likely to result in illness, injury, or loss of life to any person.

(q) "Law" includes applicable Federal, State, and local statutes, ordinances, and regulations.

(r) "Packaged" means bottled, canned, cartoned, bagged, or securely wrapped.

(s) "Permit" means the document issued by the regulatory authority that authorized a person to operate a retail food store.

(t) "Person" includes any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, the federal government and its agencies and departments, or other legal entity.

(u) "Potable water" means water that is safe for drinking.

(v) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: foods that have a pH level of 4.6 or below or a water activity (aW) value of 0.85 or less under standard conditions; food products in hermetically- sealed containers processed to prevent spoilage.

(w) "Regulatory authority" means the Tennessee Department of Agriculture.

(x) "Retail food store" means any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term does not include establishments that handle only prepackaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables; food and beverage vending machines; or food service establishments not located within a retail food store.

(y) "Safe materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in Section 201 (s) or (t) of the "Federal Food, Drug and Cosmetic Act," as used, they are "safe" only if they are used in conformity with regulations established pursuant to Section 409 or Section 706 of that Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in Section 201 (s) or (t) of the "Federal Food, Drug and Cosmetic Act" and are used in conformity with all applicable regulations of the Food and Drug Administration.

(z) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, of the food contact surfaces of utensils and equipment to a safe level.

(aa) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(bb) "Single-service articles" means items used by the retailer or consumer such as cups, containers, lids, and packaging materials, including bags and similar articles, which are intended for contact with food and designed for one-time use. The term does not include "single use" articles such as

~~number 10 cans, aluminum pie pans, bread wrappers and similar articles with which food has been packaged by the manufacturer.~~

~~(cc) "Transportation" (transported) means the movement of food within the retail food store or the delivery of food from that retail food store to another place while under the control of the person in charge.~~

~~(dd) "Utensil" means any food contact implement used in the storage, preparation, transportation, or dispensing of food.~~

~~(ee) "Warewashing" means the cleaning and sanitizing of food contact surfaces of equipment and utensils.~~

0080-04-09-.01 Definitions

(1) Accredited Program.

(a) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(c) "Accredited program" does not refer to training functions or educational programs.

(2) Additive.

(a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170.3(e)(1).

(b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.3(f).

(3) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

(4) "Approved" means acceptable to the commissioner based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) Asymptomatic.

(a) "Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(b) "Asymptomatic" includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

(6) "A_W" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol A_W.

(7) "Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(8) "Beverage" means a liquid for drinking, including water.

(9) "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(10) "Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

(11) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

(12) "CFR" means Code of Federal Regulations. Citations in this chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(13) CIP.

(a) "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(b) "CIP" does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

(14) "Commingle" means:

(a) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or

(b) To combine shucked shellfish from containers with different container codes or different shucking dates.

(15) Comminuted.

(a) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.

(b) "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

(16) "Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

(17) "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

(18) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(19) Core Item.

(a) "Core item" means a provision in this chapter that is not designated as a priority item or a priority

foundation item.

(b) "Core item" includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (ssops), facilities or structures, equipment design, or general maintenance.

(20) "Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

(21) "Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

(22) "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(23) "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(24) "Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

(25) "Department" means the Tennessee Department of Agriculture.

(26) "Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

(27) "Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(28) Drinking Water.

(a) "Drinking water" means water that meets criteria as specified in 40 CFR 141 National Primary Drinking Water Regulations.

(b) "Drinking water" is traditionally known as "potable water."

(c) "Drinking water" includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(29) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not time /temperature control of safety food and dry goods such as single-service items.

(30) Easily Cleanable.

(a) "Easily cleanable" means a characteristic of a surface that:

1. Allows effective removal of soil by normal cleaning methods;

2. Is dependent on the material, design, construction, and installation of the surface; and

3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic

agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(b) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

(31) "Easily movable" means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(32) Egg.

(a) "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey.

(b) "Egg" does not include:

1. A balut;

2. The egg of reptile species such as alligator; or

3. An egg product.

(33) Egg Product.

(a) "Egg Product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant , with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs.

(b) "Egg Product" does not include food that contains eggs only in a relatively small proportion such as cake mixes.

(34) "Employee" means a person:

(a) In charge of a food establishment;

(b) Engaged in the preparation of food or drink;

(c) Engaged in service of food to the establishment's clientele; or

(d) Engaged in warewashing.

(35) "Enterohemorrhagic Escherichia coli (EHEC)" means E. coli which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with E. coli that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the

intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: E. coli O157:H7; E. coli O157:NM; E. coli O26:H11; E. coli O145:NM; E. coli O103:H2; or E. coli O111:NM. Also see SHIGA TOXIN-PRODUCING E. COLI.

(36) "EPA" means the U.S. Environmental Protection Agency.

(37) Equipment.

(a) "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, or ware washing machine.

(b) "Equipment" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(38) "Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

(39) "FDA" means the U.S. Food and Drug Administration.

(40) Fish.

(a) "Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) "Fish" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

(41) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(42) "Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(43) "Food-contact surface" means:

(a) A surface of equipment or a utensil with which food normally comes into contact; or

(b) A surface of equipment or a utensil from which food may drain, drip, or splash:

1. Into a food, or

2. Onto a surface normally in contact with food.

(44) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(45) Food Establishment.

(a) "Food establishments" means retail food stores, and food service establishments located within retail food stores;

(b) The term "food establishments" is to be used throughout this chapter when a provision is applicable to both retail food stores and food service establishments located within retail food stores;

(46) "Food Service Establishment" means:

(a) Any establishment, place or location, whether permanent, temporary, seasonal or itinerant, where food is prepared and the public is offered to be served, or is served, food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water mixtures.

(b) "Food service establishment" includes any such places regardless of whether there is a charge for the food.

(c) "Food service establishment" does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, the location of vending machines, and supply vehicles.

(d) "Food service establishment" does not include churches, temples, synagogues or other religious institutions, civic, fraternal, or veteran's organizations where food is prepared, served, transported, or stored by volunteer personnel only on non-consecutive days; provided, however, that the storage of unopened, commercially canned food, packaged bulk food that is not time/temperature control for safety food as defined by department rules and regulations, and dry goods shall not apply for these purposes;

(e) "Food service establishment" does not include grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. For the purposes of this subparagraph, infrequent casual sales means sales not in excess of one hundred fifty dollars ($150) per day on any particular day;

(f) "Food service establishment" does not include a location from which casual, occasional food sales are conducted solely in connection with youth-related amateur athletic or recreational activities or primary or secondary school-related clubs by volunteer personnel and that are in operation for twenty-four (24) consecutive hours or less;

(g) "Food service establishment" does not include a catering business that employs no regular, full-time employees, the food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only "occasional sales" during any thirty-day period; and

(h) "Food service establishment" does not include a house or other residential structure where seriously ill or injured children and their families are provided temporary accommodations in proximity to their treatment hospitals and where food is prepared, served, transported or stored by volunteer personnel; provided, that the house or structure is supported by a § 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that has as a component of its mission the support of programs that directly improve the health and well-being of children.

(47) Food Manufacturing Plant.

(a) "Food manufacturing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

(b) "Food manufacturing plant" does not include a food establishment.

(48) Game Animal.

(a) "Game animal" means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 Definitions, or as poultry, or fish.

(b) "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) "Game animal" does not include ratites.

(49) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175 Pesticides classified for restricted use.

(50) "Good repair" means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under 0080-04-09-.04.

(51) "Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(52) "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(53) Handwashing Sink.

(a) "Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands.

(b) "Handwashing sink" includes an automatic handwashing facility.

(54) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(55) "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, or physician assistant.

(56) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(57) "Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(a) Immunocompromised; preschool age children, or older adults; and

(b) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

(58) "Imminent health hazard" means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person.

(59) "Injected" means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping."

(60) Juice.

(a) "Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables,

purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée.

(b) "Juice" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

(61) "Kitchenware" means food preparation and storage utensils.

(62) "Law" means applicable local, state, and federal statutes, regulations, and ordinances.

(63) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(64) Major Food Allergen.

(a) "Major food allergen" means:

1. Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

2. A food ingredient that contains protein derived from a food, as specified in part (a)1 of this definition.

(b) "Major food allergen" does not include:

1. Any highly refined oil derived from a food specified in part (a)1 of this definition and any ingredient derived from such highly refined oil; or

2. Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

(65) "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goat, other edible animals except fish, poultry, and wild game animals as specified under 0080-04-09-.03 (2)(a)7(i)(III), (IV).

(66) Mechanically Tenderized.

(a) "Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles or any mechanical device.

(b) "Mechanically tenderized" does not include processes by which solutions are injected into meat.

(67) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

(68) "Mobile food unit" means a food establishment designed to be readily moved and vend food.

(69) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(70) Non-Continuous Cooking.

(a) "Non-continuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(b) "Non-continuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

(71) Packaged.

(a) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(b) "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

(72) "Permit" means the document issued by the department that authorizes a person to operate a food establishment.

(73) "Permit holder" means the entity that:

(a) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and

(b) Possesses a valid permit to operate a food establishment.

(74) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments.

(75) "Person in charge" means an individual present at a food establishment who is responsible for the operation at the time of inspection. A person in charge shall be present at the establishment during food preparation and handling, and may put instructions in place for cleaning and preparing the establishment prior to the preparation of any food or beverage.

(76) Personal Care Items.

(a) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(b) "Personal care items" include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(77) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(78) "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(79) "Plumbing fixture" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

(80) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

(81) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

(a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(82) "Poultry" means:

(a) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry, and

(b) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR 362.1 Voluntary Poultry Inspection Regulations, Definitions.

(83) "Premises" means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or

(b) The physical facility, its contents, and the land or property not described in subparagraph (a) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(84) "Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(85) Priority Item.

(a) "Priority item" means a provision in this chapter whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

(b) "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing; and

(c) "Priority item" is an item that is denoted in this chapter with (P).

(86) Priority Foundation Item.

(a) "Priority foundation item" means a provision in this chapter whose application supports, facilitates or enables one or more priority items.

(b) "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and

(c) "Priority foundation item" is an item that is denoted in this chapter with (Pf).

(87) "Public water system" has the meaning stated in 40 CFR 141 National Primary Drinking Water Regulations.

(88) "Ratite" means a flightless bird such as an emu, ostrich, or rhea.

(89) "Ready-to-Eat Food" means food that:

(a) Is in a form that is edible without additional preparation to achieve food safety, as specified under one of the following 0080-04-09-.03(4)(a)1(i) or (ii), 0080-04-09-.03(4)(a)2, or 0080-04-09-.03(4)(b)1 or as specified in 0080-04-09-.03(4)(a)1(iii); or

(b) Is a raw or partially cooked animal food and the consumer is advised as specified in 0080-04-09-.03(4)(a)1(iv)(I) and (III); or

(c) Is prepared in accordance with a variance that is granted as specified in 0080-04-09-.03(4)(a)1(iv)(IV); and

(d) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(e) "Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 0080-04-09-.03(4)(a), or frozen as specified under 0080-04-09-.03(4)(b);

2. Raw fruits and vegetables that are washed as specified under 0080-04-09-.03(3)(b)5;

3. Fruits and vegetables that are cooked for hot holding, as specified under 0080-04-09-.03(4)(a)3;

4. All time/temperature control for safety food that is cooked to the temperature and time required for the specific food under 0080-04-09-.03(4) and cooled as specified under 0080-04-09-.03(5)(a)4;

5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;

6. Substances derived from plants such as spices, seasonings, and sugar;

7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

9. Food manufactured as specified in 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(90) Reduced Oxygen Packaging.

(a) "Reduced oxygen packaging" means:

1. The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and

2. A process as specified in part (a)(1) of this definition that involves a food for which the

hazards Clostridium botulinum or Listeria monocytogenes require control in the final packaged form.

(b) "Reduced oxygen packaging" includes:

1. Vacuum packing, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

2. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

3. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;

4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(91) "Refuse" means solid waste not carried by water through the sewage system.

(92) "Reminder" means a written statement concerning the health risk of consuming animal food raw, undercooked, or without otherwise being processed to eliminate pathogens.

(93) "Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

(94) "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

(95) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

(96) "Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

(97) Retail food store.

(a) "Retail food store" means any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption;

(b) "Retail food store" does not include:

(i) Establishments that handle only prepackaged, non-time/temperature control for safety food, as defined by department rules and regulations;

(ii) Roadside markets that offer only fresh fruits and fresh vegetables;

(iii) Food and beverage vending machines;

(iv) Food service establishments not located within a retail food store; or

(v) A person who makes infrequent casual sales of honey or who packs or sells less than one hundred fifty gallons (150 gals.) of honey per year.

(98) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

(99) "Safe material" means:

(a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(b) An additive that is used as specified in § 409 of the Federal Food, Drug, and Cosmetic Act; or

(c) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

(100) "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(101) "Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

(102) "Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

(103) "Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(104) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

(105) "Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

(106) "Shellstock" means raw, in-shell molluscan shellfish.

(107) "Shiga toxin-producing Escherichia coli (STEC)" means any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 E. coli. Also see Enterohemorrhagic Escherichia Coli.

(108) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

(109) "Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

(110) Single-Use Articles.

(a) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded.

(b) "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under 0080-04-09-.04-(1)(a), (2)(a), (b) for multiuse utensils.

(111) "Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

(112) "Smooth" means:

(a) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

(b) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(113) "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

(114) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(115) "Temporary food establishment" means a food establishment that operates at a fixed location in conjunction with an organized temporary event for more than one (1) day and not more than fourteen (14) consecutive days.

(116) Time/Temperature Control for Safety Food.

(a) "Time/temperature control for safety food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(b) "Time/temperature control for safety food" includes:

1. An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

2. Except as specified in subpart 3(iv) of this definition, a food that because of the interaction of its A_W and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged			
A_w values	pH values		
	4.6 or less	> 4.6 - 5.6	> 5.6
<0.92	non-TCS Food*	non-TCS Food	non-TCS Food
> 0.92 - .95	non-TCS Food	non-TCS Food	PA**
> 0.95	non-TCS food	PA	PA
* TCS food means Time/Temperature Control for Safety food ** PA means Product Assessment required			

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged				
A_w values	pH values			
	< 4.2	4.2 - 4.6	> 4.6 - 5.0	> 5.0
< 0.88	non-TCS food*	non-TCS food	non-TCS food	non-TCS food
0.88 – 0.90	non-TCS food	non-TCS food	non-TCS food	PA**
> 0.90 – 0.92	non-TCS food	non-TCS food	PA	PA
> 0.92	non-TCS food	PA	PA	PA
* TCS food means Time/Temperature Control for Safety food ** PA means Product Assessment required				

3. "Time/temperature control for safety food" does not include:

(i) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iii) A food that because of its pH or A_W value, or interaction of A_W and pH values, is designated as a non-TCS food in Table A or B of this definition;

(iv) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(I) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,

(II) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or

(III) A combination of intrinsic and extrinsic factors; or

(v) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the subparts 3(i) – 3(iv) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(117) "USDA" means the U.S. Department of Agriculture.

(118) "Utensil" means a food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single use, gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

(119) "Variance" means a written document issued by the commissioner that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the commissioner, a health hazard or nuisance will not result from the modification or waiver.

(120) "Warewashing" means the cleaning and sanitizing of utensils sanitizing of utensils and food-contact surfaces of equipment.

(121) "Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.02 FOOD.~~

~~(1) Food Supplies.~~

~~(a) General.~~

~~1. Food shall be in sound condition, safe for human consumption, and obtained from sources that comply with applicable laws relating to food safety.~~

~~(b) Special requirements.~~

~~1. Fluid milk and fluid milk products used or offered for sale shall comply with the Grade 'A' standards as established by law. Dry milk and milk products used or offered for sale shall be made from pasteurized milk and milk products.~~

2. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be received and/or repacked in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the State certification number issued according to law. Shucked shellfish should be kept in the container in which they were received until used or sold.

Each original container of unshucked shellfish (oysters, clams, or mussels) shall be identified by an attached tag, to be retained for a period of 90 days, that states the name and address of the original shellfish processor, the kind and quantity of shellfish, and certification number issued by the State or foreign shellfish control agency, where applicable.

3. Only clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or offered for sale.

4. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

(2) Food Protection.

(a) General

1. At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling, flooding, draining, and overhead leakage or condensation, or other agents of public health significance. Hermetically sealed packages shall be handled so as to maintain product and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have been returned to, or are being detained by, the retail food store because of spoilage, container damage, or other public health considerations, shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the regulatory authority.

2. Emergency Occurrences. The person in charge of a retail food store that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.

(b) Food Temperatures. Except as otherwise provided in these rules, potentially hazardous foods shall be maintained:

1. At 41°F (= 5°C) or below or 140°F (= 60°C) or above at all times except during necessary periods of preparation.

(3) Food Storage.

(a) General.

1. Food packaged in an immediate closed container, once the container is opened in the retail food store prior to use or retail sale, shall be kept covered. Food, whether raw or prepared, if removed from the immediate closed container in which it was originally packaged prior to use or retail sale, shall be stored in a clean, covered container, except during necessary periods of preparation. Whole and unprocessed

fresh raw vegetables and fresh raw fruits shall be exempted from this requirement. Container covers shall be impervious and nonabsorbent. During periods of storage, subprimal cuts of meat shall be covered with single- service wrapping materials. Primal cuts, quarter or sides of meat, or processed meats such as country hams, slab bacon, and smoked or cured sausages, may be hung uncovered on clean, sanitized hooks or placed on clean, sanitized metal racks in such a manner as to preclude contamination of any food products in storage.

2. Containers of food shall be stored a minimum of six (6) inches (152 millimeters (mm) above the floor or stored on dollies, skids, racks, or open-ended pallets, provided such equipment is easily movable either by hand or with the use of pallet-moving equipment that is on the premises and used. Such storage areas shall be kept clean. Cased food packaged in cans, glass, or other waterproof containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean.

3. Food and containers of food shall not be stored under exposed or unprotected sewer lines, or water lines that are leaking or on. which condensed water has accumulated.

4. Packaged foods shall not be stored in contact with water or undrained ice.

5. A food ingredient, such as flour, sugar, salt, baking powder, cooking oil or vinegar, that is not stored in the original package and is not readily identifiable on sight, shall be stored in a container identifying it by common name.

6. Toilet rooms and their vestibules, and garbage or mechanical rooms shall not be used for the storage of food.

(b) Refrigerated/Frozen Storage.

1. Refrigeration units or effectively insulated units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperature during storage. Each mechanically refrigerated unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to ±3º F (= 1º C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the air temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers, accurate to ±3º f (= 1º c) may be used in lieu of indicating thermometers.

2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 41°F (=5°C) or below. Potentially hazardous foods of large volumes or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre- chilled and held at a temperature of 41°F(=5°C) or below unless maintained in accordance with the hot storage requirements of this code.

3. Potentially hazardous frozen foods shall be kept frozen and should be stored at an air temperature of 0º F (= - 18º C) or below except for defrost cycles and brief periods of loading or unloading.

4. Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

(c) Hot Storage.

1. Hot food storage units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at the required temperature during

storage. Each hot food storage unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to ± 3º F (= 1º C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers accurate to ± 3º F (= ± 1º C) may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as heat lamps, calrod units, or insulated food transport carriers, a food product thermometer shall be available and used to check internal food temperature.

2. The internal temperature of potentially hazardous foods requiring hot storage shall be 140º F (60º C) or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at temperature of 140º F (60º C) or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140º F (60º C) or above unless maintained in accordance with the refrigerated storage requirements of this code.

(4) Food Preparation.

(a) General.

1. Food shall be prepared with a minimum of manual contact. Food shall be prepared on food contact surfaces, with utensils that are clean and have been sanitized to prevent cross-contamination.

2. Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods, each new operation shall begin with food contact surfaces and utensils which are clean and have been sanitized. Salads and other ready-to-eat foods should be prepared in separate rooms or in areas that are separated by a barrier or open space from areas used for processing potentially hazardous raw products.

3. Potentially hazardous foods that are in a form to be consumed without further cooking such as salads, sandwiches, and filled pastry products should be prepared from chilled products.

(b) Raw Fruits and Raw Vegetables.

1. Raw fruits and raw vegetables that will be cut or combined with other ingredients or will be otherwise processed into food products by the retail food store shall be thoroughly cleaned with potable water before being used.

(c) Cooking Potentially Hazardous Foods.

1. Potentially hazardous foods that are being processed within the retail food store by cooking shall be cooked to heat all parts of the food to a temperature of at least 140º F (60º C), except that:

(i) Poultry, poultry stuffings, stuffed meats, and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165º F (= 74º C) with no interruption of the cooking process.

(ii) Pork and pork products shall be cooked to heat all parts of the food to at least 150º F (= 66º C), or, if cooked in a microwave oven, to at least 170º F (= 77º C).

(iii) When beef roasts under 10 pounds (= 5 kilograms (kg)) in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of at least 350º F (= 177º C) throughout the process. If cooked in a

convection oven, the oven shall be preheated to and held at an air temperature of at least 325º F (= 163º C) throughout the process.

When beef roasts of 10 pounds (= 5 kilograms (kg)) or over in weight are cooked in a dry heat oven, the oven shall be preheated to and held at an air temperature of at least 250º F (= 122º C) throughout the process.

Further, in order to meet public health requirements for the processes cited above, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature.

Minimum Holding Times for Beef Roasts
at Various Internal Temperatures

Minimum Internal Temperature		Minimum Holding Time	Minimum Internal Temperature		Minimum Holding Time
º F	º C	Minutes	º F	º C	Minutes
130	54.4	121	138	58.9	19
131	55.0	97	139	59.5	15
132	55.6	77	140	60.0	12
133	56.1	62	139	60.6	10
134	56.7	47	142	61.1	8
135	57.2	37	143	61.7	6
136	57.8	32	144	62.2	5
137	58.4	24			

(iv) Beef roasts, if cooked in a microwave oven, shall be cooked to an internal temperature of at least 145º F(= 63º C).

(d) Bakery Product Fillings. Custards, cream fillings and similar products, including synthetic fillings, shall meet the temperature requirement in Subparagraph 3-b (2) of this section following preparation and be maintained at that temperature during storage, transportation, and display. Products with synthetic fillings may be excluded from this requirement if:

1. The food, including the interface between the bakery product and its filling, has a pH level of 4.6 or below or a water activity (a W) value of 0.85 or less under standard conditions; or

2. It is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or

3. Other scientific evidence is on file with the regulatory authority demonstrating that the specific product will not support the growth of pathogenic microorganisms.

Bakery products with synthetic fillings, which meet the above criteria, may be labeled to state that refrigeration is not required.

(e) Reheating. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165º F (= 74º C) or higher for a minimum of 15 seconds before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

(f) Food Product Thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to ± 2º F (= ± 1º C) shall be provided and used to assure attainment and maintenance of proper temperatures during preparation of all potentially hazardous foods.

(g) Thawing Potentially Hazardous Foods. Potentially hazardous foods shall be thawed:

1. In refrigerated units at a temperature not to exceed 41°F(=5°C); or

2. Under potable running water at a temperature of 70º F (= 21º C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food, or

3. In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

4. As part of the conventional cooking process.

(5) Food Display.

(a) Potentially Hazardous Foods. Potentially hazardous foods shall be held at an internal temperature of 41°F(=5°C) or below or at an internal temperature of 140°F(60°C) or higher during display, except that rare roast beef, which is offered for sale hot, shall be held at a temperature of at least 130°F(=55°C).

(b) Frozen Foods. Food intended for sale in a frozen state should be displayed at an air temperature of 0º F (= -18º C) or below. Except for defrost cycles and brief periods of loading or unloading. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers' specifications.

(c) Food Display. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by being packaged, by display cases, by covered containers for self-service, or by similar protective equipment. All food shall be displayed above the floor in a manner that will protect the food from contamination. Hot or cold food units shall be provided to assure the maintenance of potentially hazardous food at the required temperature during display. Potentially hazardous food shall not be provided for consumer self-service.

(d) Dispensing Utensils. To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. consumers who serve themselves bulk food shall be provided suitable dispensing utensils. Dispensing utensils shall be:

1. Stored in the food with the dispensing utensil handle extended out of the food; or

2. Stored clean and dry; or

3. Stored in running potable water.

(e) Food Sample Demonstrations and Food Promotions. When food sample demonstrations and food promotions are authorized in the retail food store, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this code.

(6) Food Transportation by the Retail Food Store.

(a) General. Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this code relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

0080-04-09-.02 Management and Personnel

(1) Supervision.

(a) Responsibility Assignment. The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation. (Pf)

(b) Knowledge Demonstration. Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the commissioner knowledge of foodborne disease prevention, application of the Hazard Analysis and Critical Control Point principles, and the requirements of these rules. The person in charge shall demonstrate this knowledge by:

1. Complying with these rules by having no violations of priority items during the current inspection; (Pf)

2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; (Pf) or

3. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(i) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee; (Pf)

(ii) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease; (Pf)

(iii) Describing the symptoms associated with the diseases that are transmissible through food; (Pf)

(iv) Explaining the significance of the relationship between maintaining the time and temperature of time/temperature control for safety food and the prevention of foodborne illness; (Pf)

(v) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish; (Pf)

(vi) Stating the required food temperatures and times for safe cooking of time/temperature control for safety food including meat, poultry, eggs, and fish; (Pf)

(vii) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature control for safety food; (Pf)

(viii) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(I) Cross contamination, (Pf)

(II) Hand contact with ready-to-eat foods, (Pf)

(III) Handwashing, (Pf) and

(IV) Maintaining the food establishment in a clean condition and in good repair; (Pf)

(ix) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic

reaction; (Pf)

(x) Explaining the relationship between food safety and providing equipment that is:

(I) Sufficient in number and capacity, (Pf) and

(II) Properly designed, constructed, located, installed, operated, maintained, and cleaned; (Pf)

(xi) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment; (Pf)

(xii) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections; (Pf)

(xiii) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law; (Pf)

(xiv) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of these regulations; (Pf)

(xv) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this chapter, or an agreement between the commissioner and the food establishment; (Pf)

(xvi) Explaining the responsibilities, rights, and authorities assigned by these regulations to the:

(I) Food employee, (Pf)

(II) Conditional employee, (Pf)

(III) Person in charge, (Pf)

(IV) Commissioner; (Pf) and

(xvii) Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees. (Pf)

(c) Duties. Person in Charge. The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home, except as provided in T.C.A.§ 53-8-117, or in a room used as living or sleeping quarters as specified under 0080-04-09-.06(2)(b)10; (Pf)

2. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that the person in charge may authorize brief visits and tours if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination; (Pf)

3. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these regulations; (Pf)

4. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing; (Pf)

5. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt; (Pf)

6. Employees are properly cooking time/temperature control for safety food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under 0080-04-09-.04(2)(c) or 0080-04-09-.04(5)(b); (Pf)

7. Employees are using proper methods to rapidly cool potentially time/temperature control for safety foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling; (Pf)

8. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 0080-04-09-.03(6)(c) that the food is not cooked sufficiently to ensure its safety; (Pf)

9. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing; (Pf)

10. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under 0080-04-09-.03(3)(d)6; (Pf)

11. Except when approval is obtained from the commissioner as specified in 0080-04-09-.03(3)(a)1(v), employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; (Pf)

12. Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; (Pf) and

13. Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under part (2)(a)1. (Pf)

(2) Employee Health.

(a) Responsibility of Permit Holder, Person in Charge, and Conditional Employees.

1. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

(i) Has any of the following symptoms:

(I) Vomiting, (P)

(II) Diarrhea, (P)

(III) Jaundice, (P)

(IV) Sore throat with fever, (P) or

(V) A lesion containing pus such as a boil or infected wound that is open or draining and is:

I. On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover, (P)

II. On exposed portions of the arms, unless the lesion is protected by an impermeable cover, (P) or

III. On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; (P)

(ii) Has an illness diagnosed by a health practitioner due to:

(I) Norovirus, (P)

(II) Hepatitis A virus, (P)

(III) Shigella spp., (P)

(IV) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, (P)

(V) Salmonella Typhi; (P), or

(VI) Nontyphoidal Salmonella; (P)

(iii) Had a previous illness, diagnosed by a health practitioner, within the past three months due to Salmonella Typhi, without having received antibiotic therapy, as determined by a health practitioner; (P)

(iv) Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with: (P)

(I) Norovirus within the past 48 hours of the last exposure, (P)

(II) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, or Shigella spp. within the past three days of the last exposure, (P)

(III) Salmonella Typhi within the past 14 days of the last exposure, (P) or

(IV) Hepatitis A virus within the past 30 days of the last exposure; (P) or

(v) Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has

knowledge about, an individual diagnosed with an illness caused by:

(I) Norovirus within the past 48 hours of the last exposure, (P)

(II) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, (P) or Shigella spp. within the past three days of the last exposure,

(III) Salmonella Typhi within the past 14 days of the last exposure, (P) or

(IV) Hepatitis A virus within the past 30 days of the last exposure. (P)

2. The person in charge shall notify the commissioner when a food employee is:

(i) Jaundiced, (Pf) or

(ii) Diagnosed with an illness due to a pathogen as specified under items 1(ii)(I) - (V) of this subparagraph. (Pf)

3. The person in charge shall ensure that a conditional employee:

(i) Who exhibits or reports a symptom, or who reports a diagnosed illness as specified under subparts 1(i) - (iii) of this subparagraph, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under 0080-04-09-.02(2)(c); (P) and

(ii) Who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure as specified under subparts 1(iv) – (v), is prohibited from becoming a food employee until the conditional employee meets the criteria as specified under 0080-04-09-.02(2)(c)9. (P)

4. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subparts 1(i) - (v) of this subparagraph is:

(i) Excluded as specified under 0080-04-09-.02(2)(b)1-3, 4(i), 5(i), 6(i), or 7(i) and in compliance with the provisions specified under 0080-04-09-.02(2)(c)1-7; (P) or

(ii) Restricted as specified under 0080-04-09-.02(2)(b)4(ii), 5(ii), 6(ii), 7(ii), or 0080-04-09-.02(2)(b) 8 or 9 and in compliance with the provisions specified under 0080-04-09-.02(2)(c)4-9. (P)

5. A food employee or conditional employee shall report to the person in charge the information as specified under part 1 of this subparagraph. (Pf)

6. A food employee shall:

(i) Comply with an exclusion as specified under 0080-04-09-.02(2)(b)1-3, 4(i), 5(i), 6(i), or 7(i) and with the provisions specified under 0080-04-09-.02(2)(c)4-9; (P) or

(ii) Comply with a restriction as specified under 0080-04-09-.02(2)(b)4(ii), 5(ii), 6(ii), 7(ii), or 0080-04-09-.02(2)(b) 8 or 9 and comply with the provisions specified under 0080-04-09-.02(2)(c)4-9. (P)

(b) Exclusions and Restrictions. The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

   (i) Symptomatic with vomiting or diarrhea; (P) or

   (ii) Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga toxin-producing E. coli. (P)

2. Exclude a food employee who is:

   (i) Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection; (P)

   (ii) Diagnosed with an infection from hepatitis A virus within 14 calendar days from onset of any illness symptoms, or within seven calendar days of the onset of jaundice; (P) or

   (iii) Diagnosed with an infection from hepatitis A virus without developing symptoms. (P)

3. Exclude a food employee who is diagnosed with an infection from Salmonella Typhi, or reports a previous infection with Salmonella Typhi within the past 3 months as specified under 0080-04-09-.02(2)(a)1(iii). (P)

4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:

   (i) Exclude the food employee who works in a food establishment serving a highly susceptible population; (P) or

   (ii) Restrict the food employee who works in a food establishment not serving a highly susceptible population. (P)

5. If a food employee is diagnosed with an infection from Shigella spp. and is asymptomatic:

   (i) Exclude the food employee who works in a food establishment serving a highly susceptible population; (P) or

   (ii) Restrict the food employee who works in a food establishment not serving a highly susceptible population. (P)

6. If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing E. coli, and is asymptomatic:

   (i) Exclude the food employee who works in a food establishment serving a highly susceptible population; (P) or

   (ii) Restrict the food employee who works in a food establishment not serving a highly susceptible population. (P)

7. If a food employee is ill with symptoms of acute onset of sore throat with fever:

   (i) Exclude the food employee who works in a food establishment serving a highly susceptible population; (P) or

   (ii) Restrict the food employee who works in a food establishment not serving a highly susceptible population. (P)

8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under 0080-04-09-.02(2)(a)1(i)(V), restrict the food employee. (P)

9. If a food employee is exposed to a foodborne pathogen as specified under 0080-04-09-.02(2)(a)1(iv) or (v), restrict the food employee who works in a food establishment serving a highly susceptible population. (P)

(c) Removal, Adjustment, or Retention of Exclusions and Restrictions. The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

1. Except when a food employee is diagnosed with an infection from hepatitis A virus or Salmonella Typhi:

(i) Reinstate a food employee who was excluded as specified under 0080-04-09-.02(2)(b)1(i) if the food employee:

(I) Is asymptomatic for at least 24 hours; (P) or

(II) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition. (P)

(ii) If a food employee was diagnosed with an infection from Norovirus and excluded as specified under 0080-04-09-.02(2)(b)1(ii):

(I) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subparts 4(i) or (ii) of this subparagraph are met; (P) or

(II) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subparts 4(i) or (ii) of this subparagraph are met. (P)

(iii) If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under 0080-04-09-.02(2)(b)1(ii):

(I) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subparts 5(i) and (ii) of this subparagraph are met; (P) or

(II) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subparts 5(i) and (ii), or 5(i) and (iii) of this subparagraph are met. (P)

(iv) If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing Escherichia coli and excluded as specified under 0080-04-09-.02(2)(b)1(ii):

(I) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under

subparts 6(i) or (ii) of this subparagraph are met; (P) or

(II) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subparts 6(i) or (ii) are met. (P)

2. Reinstate a food employee who was excluded as specified under 0080-04-09-.02(2)(b)2 if the person in charge obtains approval from the commissioner and one of the following conditions is met;

(i) The food employee has been jaundiced for more than seven calendar days; (P)

(ii) The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; (P) or

(iii) The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection. (P)

3. Reinstate a food employee who was excluded as specified under 0080-04-09-.02(2)(b)3 if:

(i) The person in charge obtains approval from the commissioner; (P) and

(ii) The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from S. Typhi infection. (P)

4. Reinstate a food employee who was excluded as specified under 0080-04-09-.02(2)(b)1(ii) or 4(i) who was restricted under 0080-04-09-.02(2)(b)4(ii) if the person in charge obtains approval from the commissioner and one of the following conditions is met:

(i) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection; (P)

(ii) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became asymptomatic; (P) or

(iii) The food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed. (P)

5. Reinstate a food employee who was excluded as specified under 0080-04-09-.02(2)(b)1(ii) or 5(i) or who was restricted under 0080-04-09-.02(2)(b)5(ii) if the person in charge obtains approval from the commissioner and one of the following conditions is met:

(i) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:

(I) Not earlier than 48 hours after discontinuance of antibiotics, (P) and

(II) At least 24 hours apart; (P)

(ii) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic; (P) or

(iii) The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed. (P)

6. Reinstate a food employee who was excluded or restricted as specified under 0080-04-09-.02(2)(b)1(ii) or 6(i) or who was restricted under 0080-04-09-.02(2)(b)6(ii) if the person in charge obtains approval from the commissioner and one of the following conditions is met:

(i) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga toxin-producing Escherichia coli based on test results that show two consecutive negative stool specimen cultures that are taken:

(I) Not earlier than 48 hours after discontinuance of antibiotics; (P) and

(II) At least 24 hours apart; (P)

(ii) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the food employee became asymptomatic; (P) or

(iii) The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the food employee was diagnosed. (P)

7. Reinstate a food employee who was excluded or restricted as specified under 0080-04-09-.02(2)(b)7(i) or (ii) if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

(i) Has received antibiotic therapy for Streptococcus pyogenes infection for more than 24 hours; (P)

(ii) Has at least one negative throat specimen culture for Streptococcus pyogenes infection; (P) or

(iii) Is otherwise determined by a health practitioner to be free of a Streptococcus pyogenes infection. (P)

8. Reinstate a food employee who was restricted as specified under 0080-04-09-.02(2)(b)8 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

(i) An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist; (P)

(ii) An impermeable cover on the arm if the infected wound or pustular boil is on the arm; (P) or

(iii) A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body. (P)

9. Reinstate a food employee who was restricted as specified under 0080-04-09-.02(2)(b)9 and was exposed to one of the following pathogens as specified under 0080-04-09-.02(2)(a)1(iv) or (v):

(i) Norovirus and one of the following conditions is met:

(I) More than 48 hours have passed since the last day the food employee was potentially exposed; (P) or

(II) More than 48 hours have passed since the food employee's household contact became asymptomatic. (P)

(ii) Shigella spp. or Enterohemorrhagic or Shiga toxin-producing Escherichia coli and one of the following conditions are met:

(I) More than three calendar days have passed since the last day the food employee was potentially exposed; (P) or

(II) More than three calendar days have passed since the food employee's household contact became asymptomatic. (P)

(iii) S. Typhi and one of the following conditions are met:

(I) More than 14 calendar days have passed since the last day the food employee was potentially exposed; (P) or

(II) More than 14 calendar days have passed since the food employee's household contact became asymptomatic. (P)

(iv) Hepatitis A virus and one of the following conditions is met:

(I) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A; (P)

(II) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A; (P)

(III) The food employee is immune to hepatitis A virus infection because of IgG administration; (P)

(IV) More than 30 calendar days have passed since the last day the food employee was potentially exposed; (P)

(V) More than 30 calendar days have passed since the food employee's household contact became jaundiced; (P) or

(VI) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in items 9(iv)(IV) and (V) of this subpart, and the food employee receives additional training about:

I. Hepatitis A symptoms and preventing the transmission of infection, (P)

II. Proper handwashing procedures, (P) and

III. Protecting ready-to-eat food from contamination introduced by bare hand contact. (P)

(3) Personal Cleanliness.

(a) Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean. (P)

(b) Cleaning Procedure.

1. Except as specified in part 4 of this subparagraph, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink that is equipped as specified under or 0080-04-09-.05(2)(b)2 and 0080-04-09-.06(3)(a). (P)

2. Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(i) Rinse under clean, running warm water; (P)

(ii) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer; (P)

(iii) Rub together vigorously for at least 10 to 15 seconds while:

(I) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure, (P) and

(II) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers; (P)

(iv) Thoroughly rinse under clean, running warm water; (P) and

(v) Immediately follow the cleaning procedure with thorough drying using a method as specified under 0080-04-09-.06(3)(a)3. (P)

3. To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.

4. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.

(c) When to Wash. Food employees shall clean their hands and exposed portions of their arms as specified under 0080-04-09-.02(3)(b) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles (P) and:

1. After touching bare human body parts other than clean hands and clean, exposed portions of arms; (P)

2. After using the toilet room; (P)

3. After caring for or handling service animals or aquatic animals as specified in 0080-04-09-.02(4)(d)2; (P)

4. Except as specified in 0080-04-09-.02(4)(a)2, after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking; (P)

5. After handling soiled equipment or utensils; (P)

6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; (P)

7. When switching between working with raw food and working with ready-to-eat food; (P)

8. Before donning gloves for working with food; (P) and

9. After engaging in other activities that contaminate the hands. (P)

(d) Where to Wash. Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and shall not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste. (Pf)

(e) Hand Antiseptics.

1. A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(i) Comply with one of the following:

(I) Be an approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness; (Pf) or

(II) Have active antimicrobial ingredients that are listed in the FDA monograph for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash, (Pf) and

(ii) Comply with one of the following:

(I) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles;(Pf) or

(II) Comply with and be listed in:

I. 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with conditions of safe use, (Pf) or

II. 21 CFR 182 - Substances Generally Recognized as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with food, (Pf) and

III. Be applied only to hands that are cleaned as specified under 0080-04-09-.02(3)(b). (Pf)

2. If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under (e)(ii) of this paragraph, use shall be:

(i) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; (Pf) or

(ii) Limited to situations that involve no direct contact with food by the bare hands.

3. A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine. (Pf)

(f) Maintenance.

1. Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. (Pf)

2. Unless wearing intact gloves in good repair, a food employee shall not wear fingernail polish or artificial fingernails when working with exposed food. (Pf)

(g) Prohibition. Except for a plain ring such as a wedding band, while preparing food, food employees shall not wear jewelry including medical information jewelry on their arms and hands.

(h) Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(4) Hygienic Practices.

(a) Eating, Drinking, or Using Tobacco.

1. Except as specified in part 2 of this subparagraph, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

2. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

(i) The employee's hands;

(ii) The container; and

(iii) Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Discharges from the Eyes, Nose, and Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth shall not work with exposed food; clean equipment, utensils, and linens; or unwrap single-service or single-use articles.

(c) Effectiveness.

1. Except as provided in part 2 of this subparagraph, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

2. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Handling Prohibition.

1. Except as specified in part 2 of this subparagraph, food employees shall not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in 0080-04-09-.06(5)(o)2(i)-(v). (Pf)

2. Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacean in display tanks if they wash their hands as specified under 0080-04-09-.02(3)(b) and 0080-04-09-.02(3)(c)3.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.03 PERSONNEL.~~

~~(1) Employee Health.~~

~~(a) General. No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while affected with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food store in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.~~

~~(2) Personal Cleanliness.~~

~~(a) Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, using the toilet, and again upon returning to work after using the toilet; before and after handling raw meat, or raw poultry, or raw seafood; and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.~~

~~(3) Clothing.~~

~~(a) General.~~

~~1. Employees shall wear clean outer clothing.~~

~~2. Employees shall use effective hair restraints where necessary to prevent the contamination of food or food-contact surfaces.~~

~~(4) Employee Practices.~~

~~(a) General.~~

~~1. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.~~

~~2. Employees shall consume food or use tobacco only in designated areas. Such designated areas must be located so that the employee's eating or tobacco use does not result in the contamination of food, equipment, or utensils. An employee may drink from a closed beverage container if the container is handled so as to prevent the contamination of the employee's hands, the container, any exposed food, clean equipment, utensils, linens, or unwrapped single-service and single-use articles.~~

0080-04-09-.03 Food

(1) Condition. Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and, as specified under 0080-04-09-.03(6)(a)2, honestly presented. (P)

(2) Sources, Specifications, and Original Containers and Records.

(a) Sources.

1. Compliance with Food Law.

(i) Food shall be obtained from sources that comply with law. (P)

(ii) Food prepared in a non-permitted private home shall not be used or offered for human consumption in a food establishment. (P)

(iii) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under 0080-04-09-.03(2)(b)7 and 8. (Pf)

(iv) Fish, other than those specified in 0080-04-09-.03(4)(b), that are intended for consumption in raw or undercooked form and allowed as specified in 0080-04-09-.03(4)(a)1(iv), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 0080-04-09-.03(4)(b); or if they are frozen on the premises as specified under 0080-04-09-.03(4)(b) and records are retained as specified under 0080-04-09-.03(4)(b)2.

(v) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 0080-04-09-.03(4)(a)1(iii) shall be:

(I) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; (Pf) or

(II) Deemed acceptable by the commissioner based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; (Pf) and

(III) If individually cut in a food establishment:

I. Cut from whole-muscle, intact beef that is labeled by a food processing plant as specified in item (v)(I) or identified as specified in item (v)(II) of this part, (Pf)

II. Prepared so they remain intact; (Pf) and

III. If packaged for undercooking in a food establishment, labeled in part (a)1(v)(I) or identified as specified in part (a)1(v)(II). (Pf)

(vi) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

(vii) Eggs that have not been specifically treated to destroy all viable salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

2. Food in a Hermetically Sealed Container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant. (P)

3. Fluid Milk and Milk Products. Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law. (P)

4. Fish.

(i) Fish received for sale or service shall be: (P)

(I) Commercially and legally caught or harvested; (P) or

(II) Approved for sale or service. (P)

(ii) Molluscan shellfish that are recreationally caught shall not be received for sale or service. (P)

5. Molluscan Shellfish.

(i) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. (P)

(ii) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List. (P)

6. Wild Mushrooms.

(i) Except as specified in subpart (ii) of this part, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. (P)

(ii) This part does not apply to:

(I) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or

(II) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

7. Game Animals.

(i) If game animals are received for sale or service they shall be:

(I) Commercially raised for food (P) and:

I. Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, (P) or

II. Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, (P) and

III. Raised, slaughtered, and processed according to:

A. Laws governing meat and poultry as determined by the

agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and

B. Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; (P)

(II) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Exotic animals; voluntary inspection of rabbits that are "inspected and certified" in accordance with 9 CFR 354 voluntary inspection of rabbits and edible products thereof; (P)

(III) As allowed by law, for wild game animals that are live-caught:

I. Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, (P) and

II. Slaughtered and processed according to:

A. Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and

B. Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; (P) or

(IV) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:

I. Receive a postmortem examination by an approved veterinarian or veterinarian's designee, (P) or

II. Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, (P) and

III. Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program. (P)

(ii) A game animal shall not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and threatened wildlife and plants.

(b) Specifications for Receiving.

1. Temperature.

(i) Except as specified in subpart (ii) of this part, refrigerated, time/temperature control for safety food shall be at a temperature of 5°C (41°F) or below when

received. (P)

(ii) If a temperature other than 5°C (41°F) for a time/temperature control for safety food is specified in law governing its distribution, such as laws governing milk and molluscaun shellfish, the food may be received at the specified temperature.

(iii) Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)

(iv) Time/temperature control for safety food that is cooked to a temperature and for a time specified under 0080-04-09-.03(4)(a)1-3 and received hot shall be at a temperature of 57°C (135°F) or above. (P)

(v) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. (Pf)

(vi) Upon receipt, time/temperature control for safety food shall be free of evidence of previous temperature abuse. (Pf)

2. Additives. Food shall not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180 Tolerances for pesticides chemicals in food, and exceptions. (P)

3. Eggs. Eggs shall be received clean and sound and shall not exceed the restricted Egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA. (P)

4. Eggs and Milk Products, Pasteurized.

(i) Egg Products shall be obtained pasteurized. (P)

(ii) Fluid and dry milk and milk products shall:

(I) Be obtained pasteurized; (P) and

(II) Comply with Grade A standards as specified in law. (P)

(iii) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen desserts. (P)

(iv) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and related cheese products, for curing certain cheese varieties. (P)

5. Package Integrity. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants. (Pf)

6. Ice. Ice for use as a food or a cooling medium shall be made from drinking water. (P)

7. Shucked Shellfish, Packaging and Identification.

(i) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the: (Pf)

(I) Name, address, and certification number of the shucker, packer or re-

packer of the molluscan shellfish; (Pf) and

(II) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more. (Pf)

(ii) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under subpart (i) of this part shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan shellfish.

8. Shellstock Identification.

(i) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list: (Pf)

(I) Except as specified under subpart (iii) of this part, on the harvester's tag or label, the following information in the following order: (Pf)

I. The harvester's identification number that is assigned by the shellfish control authority, (Pf)

II. The date of harvesting, (Pf)

III. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested, (Pf)

IV. The type and quantity of shellfish, (Pf) and

V. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; (Pf) and

(II) Except as specified in subpart (iv) of this part, on each dealer's tag or label, the following information in the following order: (Pf)

I. The dealer's name and address, and the certification numbers assigned by the shellfish control authority, (Pf)

II. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, (Pf)

III. The same information as specified for a harvester's tag under subitems 8(i)(I)II-IV of this subparagraph, (Pf) and

IV. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days." (Pf)

(ii) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subpart 8(i) of

this subparagraph shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(iii) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(iv) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subitems 8(i)(II)I and II of this subparagraph, individual dealer tags or labels need not be provided.

9. Shellstock, Condition. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

10. Commercially Processed - Pre-packaged juice shall:

(i) Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; (Pf) and

(ii) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24 Process Controls. (P)

(c) Original Containers and Records.

1. Molluscan Shellfish, Original Container.

(i) Except as specified in subparts (ii) - (iv) of this part, molluscan shellfish shall not be removed from the container in which they are received other than immediately before sale or preparation for service.

(ii) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

(I) The source of the shellstock on display is identified as specified under 0080-04-09-.03(2)(b)8 and recorded as specified under 0080-04-09-.03(2)(c)2; and

(II) The shellstock are protected from contamination.

(iii) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

(I) The labeling information for the shellfish on display as specified under 0080-04-09-.03(2)(b)7 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(II) The shellfish are protected from contamination.

(iv) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:

(I) The labeling information for the shellfish is on each consumer self-service container as specified under 0080-04-09-.03(2)(b)7 and 0080-04-

09-.03(6)(b)1 and 0080-04-09-.03(6)(b)2(i)-(v);

(II) The labeling information as specified under 0080-04-09-.03(2)(b)7 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;

(III) The labeling information and dates specified under item (iv)(II) of this part are maintained for 90 days; and

(IV) The shellfish are protected from contamination.

2. Shellstock, Maintaining Identification.

(i) Except as specified under item (iii)(II) of this part, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty. (Pf)

(ii) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label. (Pf)

(iii) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label, as specified under subpart (ii) of this part, by: (Pf)

(I) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subpart (ii) of this part; (Pf) and

(II) If shellstock are removed from its tagged or labeled container:

I. Preserving source identification by using a record keeping system as specified under item (iii)(I) of this part, (Pf) and

II. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer. (Pf)

(3) Protection from Contamination after Receiving.

(a) Preventing Contamination by Employees.

1. Preventing Contamination from Hands.

(i) Food employees shall wash their hands as specified under 0080-04-09-.02(3)(b).

(ii) Except when washing fruits and vegetables as specified under 0080-04-09-.03(3)(b)5 or as specified in subpart (v) of this part, food employees shall not contact exposed, ready-to-eat with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. (P)

(iii) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form. (Pf)

(iv) Subpart (ii) of this part does not apply to a food employee who contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being

added as an ingredient to a food that is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 74˚C (165˚F).

(v) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

(I) The permit holder obtains prior approval from the commissioner;

(II) Written procedures are maintained in the food establishment and made available to the commissioner upon request that include:

I. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands,

II. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 0080-04-09-.05(2)(c)1, 0080-04-09-.05(2)(d)1, 0080-04-09-.05(2)(e)1, 0080-04-09-.06(3)(a)2, 0080-04-09-.06(3)(a)3, and 0080-04-09-.06(3)(a)5, are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;

(III) A written employee health policy that details how the food establishment complies with 0080-04-09-.02(2)(a), (b), and (c) including:

I. Documentation that food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 0080-04-09-.02(2)(a)1,

II. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 0080-04-09-.02(2)(a)5 and 6, and

III. Documentation that the person in charge acknowledges the responsibilities as specified under 0080-04-09-.02(2)(a)2, 3, and 4, and 0080-04-09-.02(2)(b)and 0080-04-09-.02(2)(c);

(IV) Documentation that food employees acknowledge that they have received training in:

I. The risks of contacting the specific ready-to-eat foods with bare hands,

II. Proper handwashing as specified under 0080-04-09-.02(3)(b),

III. When to wash their hands as specified under 0080-04-09-.02(3)(c),

IV. Where to wash their hands as specified under 0080-04-09-.02(3)(d),

V. Proper fingernail maintenance as specified under 0080-04-09-.02(3)(f),

VI. Prohibition of jewelry as specified under 0080-04-09-.02(3)(g), and

VII. Good hygienic practices as specified under 0080-04-09-.02(4)(a) and 0080-04-09-.02(4)(b);

(V) Documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified under 0080-04-09-.02(3)(a), 0080-04-09-.02(3)(b), 0080-04-09-.02(3)(c), and 0080-04-09-.02(3)(d) during all hours of operation when the specific ready-to-eat foods are prepared;

(VI) Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

I. Double handwashing,

II. Nail brushes,

III. A hand antiseptic after handwashing as specified under 0080-04-09-.02(3)(e),

IV. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill, or

V. Other control measures approved by the commissioner; and

VI. Documentation that corrective action is taken when items (v)(I) - (VI) of this part are not followed.

2. Preventing Contamination When Tasting. A food employee shall not use a utensil more than once to taste food that is to be sold or served. (P)

(b) Preventing Food and Ingredient Contamination.

1. Packaged and Unpackaged Food – Separation, Packaging, and Segregation.

(i) Food shall be protected from cross contamination by:

(I) Except as specified in subitem (I)III below, separating raw animal foods during storage, preparation, holding, and display from:

I. Raw ready-to-eat including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables, (P) and

II. Cooked ready-to-eat food; (P)

III. Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.

(II) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

I. Using separate equipment for each type, (P) or

II. Arranging each type of food in equipment so that cross contamination of one type with another is prevented, (P) and

III. Preparing each type of food at different times or in separate areas;

(III) Cleaning equipment and utensils as specified under 0080-04-09-.04(6)(b)1(i) and sanitizing as specified under 0080-04-09-.04(7)(c);

(IV) Except as specified under 0080-04-09-.03(5)(a)5(ii)(II) and in subpart (ii) of this part, storing the food in packages, covered containers, or wrappings;

(V) Cleaning hermetically sealed containers of food of visible soil before opening;

(VI) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(VII) Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 0080-04-09-.06(4)(d); and

(VIII) Separating fruits and vegetables, before they are washed as specified under 0080-04-09-.03(3)(b)5 from ready-to-eat foods.

(ii) Item (i)(IV) of this part does not apply to:

(I) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(II) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

(III) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

(IV) Food being cooled as specified under 0080-04-09-.03(5)(a)5(ii)(II); or

(V) Shellstock.

2. Food Storage Containers, Identified with Common Name of Food. Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

3. Pasteurized Eggs, Substitute for Raw Eggs for Certain Recipes. Pasteurized eggs or egg product shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:

(i) Cooked as specified under 0080-04-09-.03(4)(a)1(i) or (ii); (P) or

(ii) Included in 0080-04-09-.03(4)(a)1(iv). (P)

4. Protection from Unapproved Additives.

(i) Food shall be protected from contamination that may result from the addition of, as specified in 0080-04-09-.03(2)(b)2:

(I) Unsafe or unapproved food or color additives; (P) and

(II) Unsafe or unapproved levels of approved and color additives. (P)

(ii) A food employee shall not:

(I) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; (P) or

(II) Except for grapes, serve or sell food specified under item (I) of this subpart that is treated with sulfiting agents before receipt by the food establishment. (P)

5. Washing Fruits and Vegetables.

(i) Except as specified in subpart (ii) of this part and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

(ii) Fruits and vegetables may be washed by using chemicals as specified under 0080-04-09-.07(2)(d)2.

(c) Preventing Contamination from Ice Used as Coolant.

1. Ice Used as Exterior Coolant, Prohibited as Ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice shall not be used as food. (P)

2. Storage or Display of Food in Contact with Water or Ice.

(i) Packaged food shall not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(ii) Except as specified in subparts (iii) and (iv) of this part, unpackaged food shall not be stored in direct contact with undrained ice.

(iii) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(iv) Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(d) Preventing Contamination from Equipment, Utensils, and Linens.

1. Food Contact with Equipment and Utensils. Food shall only contact surfaces of:

(i) Equipment and utensils that are cleaned as specified under 0080-04-09-.04(6) and sanitized as specified under 0080-04-09-.04(7); (P) or

(ii) Single-service and single-use articles. (P)

2. In-Use Utensils, Between-Use Storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(i) Except as specified under subpart (ii) of this part, in the food with their handles above the top of the food and the container;

(ii) In food that is not time/temperature control for safety food with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(iii) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under 0080-04-09-.04(6)(b) and 0080-04-09-.04(7)(b);

(iv) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(v) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not time/temperature control for safety food; or

(vi) In a container of water if the water is maintained at a temperature of at least 57°C (135°F) and the container is cleaned at a frequency specified under 0080-04-09-.04(6)(b)1(iv)(VII).

3. Linens and Cloth Napkins, Use Limitation. Linens and cloth napkins shall not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

4. Wiping Cloths, Use Limitation.

(i) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(I) Maintained dry; and

(II) Used for no other purpose.

(ii) Cloths in-use for wiping counters and other equipment surfaces shall be:

(I) Held between uses in a chemical sanitizer solution at a concentration specified under 0080-04-09-.04(5)(a)14; and

(II) Laundered daily as specified under 0080-04-09-.04(8)(b)4.

(iii) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(iv) Dry wiping cloths and the chemical sanitizing solutions specified in item (ii)(I) of this part in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(v) Containers of chemical sanitizing solutions specified in item (ii)(I) of this part in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(vi) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

5. Gloves, Use Limitation.

(i) If used, single-use gloves shall be used for only one task such as working with ready-to-eat or with raw animal food, used for no other purpose, and discarded

when damaged or soiled, or when interruptions occur in the operation. (P)

(ii) Except as specified in subpart (iii) of this part, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under 0080-04-09-.03(4) such as frozen food or a primal cut of meat.

(iii) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

(iv) Cloth gloves shall not be used in direct contact with food unless the food is subsequently cooked as required under 0080-04-09-.03(4) such as frozen food or a primal cut of meat.

6. Using Clean Tableware for Second Portions and Refills.

(i) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees shall not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

(ii) Except as specified in subpart (iii) of this part, self-service consumers shall not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

(iii) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under 0080-04-09-.04(2)(d)3(i),(ii) and (iv).

7. Refilling Returnables.

(i) A take-home food container returned to a food establishment shall not be refilled at a food establishment with a time/temperature control for safety food.

(ii) Except as specified in subpart (iii) of this part, a take-home food container refilled with food that is not time/temperature control for safety food shall be cleaned as specified under 0080-04-09-.04(6)(c)7(ii).

(iii) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under 0080-04-09-.04(2)(d)3(i), (ii) and (iv).

(e) Preventing Contamination from the Premises.

1. Food Storage.

(i) Except as specified in subparts (ii) and (iii) of this part, food shall be protected from contamination by storing the food:

(I) In a clean, dry location;

(II) Where it is not exposed to splash, dust, or other contamination; and

(III) At least 15 cm (6 inches) above the floor.

(ii) Food in packages and working containers may be stored less than 15 cm (6

inches) above the floor on case lot handling equipment as specified under 0080-04-09-.04(2)(d)18.

(iii) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

2. Food Storage, Prohibited Areas. Food shall not be stored:

(i) In locker rooms;

(ii) In toilet rooms;

(iii) In dressing rooms;

(iv) In garbage rooms;

(v) In mechanical rooms;

(vi) Under sewer lines that are not shielded to intercept potential drips;

(vii) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(viii) Under open stairwells; or

(ix) Under other sources of contamination.

3. Food Preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

(f) Preventing Contamination by Consumers.

1. Food Display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means. (P)

2. Condiments, Protection. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

3. Consumer Self-Service Operations.

(i) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish shall not be offered for consumer self-service. This subpart does not apply to:

(I) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

(II) Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or

(III) Raw, frozen, shell-on shrimp, or lobster.

(ii) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from

contamination. (Pf)

(iii) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures. (Pf)

4. Returned Food and Re-Service of Food.

(i) Except as specified in subpart (ii) of this part, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer shall not be offered as food for human consumption. (P)

(ii) Except as specified under 0080-04-09-.03(8)(a)7, a container of food that is not time/temperature control for safety food may be re-served from one consumer to another if:

(I) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(II) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(g) Preventing Contamination from Other Sources. Miscellaneous Sources of Contamination. Food shall be protected from contamination that may result from a factor or source not specified under 0080-04-09-.03(3).

(4) Destruction of Organisms of Public Health Concern.

(a) Cooking.

1. Raw Animal Foods.

(i) Except as specified under subparts (ii), (iii) and (iv) of this part, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(I) 63°C (145°F) or above for 15 seconds for: (P)

I. Raw eggs that are broken and prepared in response to a consumer's order and for immediate service, (P) and

II. Except as specified under items (i)(I) and (III) and subpart (ii), and in subpart (iii) of this part, fish and meat including game animals commercially raised for food as specified under 0080-04-09-.03(2)(a)7(i)(I) and game animals under a voluntary inspection program as specified under 0080-04-09-.03(2)(a)7(i)(II); (P)

(II) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, mechanically tenderized, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 0080-04-09-.03(2)(a)7(i)(I), and game animals under a voluntary inspection program as specified 0080-04-09-.03(2)(a)7(i)(II) and raw eggs that are not prepared as specified under subitem 1(i)(I)I of this subparagraph: (P)

Minimum	
Temperature °C (°F)	Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

; or

(III) 74°C (165°F) or above for 15 seconds for poultry, baluts, wild game animals as specified under 0080-04-09-.03(2)(a)7(i)(III) and (IV), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. (P)

(ii) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:

(I) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature: (P)

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity[1]	121°C (250°F) or less	121°C (250°F) or less
[1]Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.		

; and

(II) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature: (P)

Temperature °C (°F)	Time[1] in Minutes	Temperature °C (°F)	Time[1] in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		

[1]Holding time may include postoven heat rise.

(iii) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(I) The food establishment serves a population that is not a highly susceptible population,

(II) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified under 0080-04-09-.03(2)(a)1(v), and

(III) The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.

(iv) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartar; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subpart (iii) of this part, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:

(I) As specified under 0080-04-09-.03(8)(a)3(i) and (ii) , the food establishment serves a population that is not a highly susceptible population;

(II) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; (Pf) and

(III) The consumer is informed as specified under 0080-04-09-.03(6)(c) that to ensure its safety, the food should be cooked as specified under subpart (i) or (ii) of this part; or

(IV) The commissioner grants a variance from subpart (i) or (ii) of this part as specified in 0080-04-09-.08(1)(c)1 based on a HACCP plan that:

I. Is submitted by the permit holder and approved as specified under 0080-04-09-.08(1)(c)2,

II. Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and

III. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the

conditions of the variance.

2. Microwave Cooking. Raw animal foods cooked in a microwave oven shall be:

(i) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(ii) Covered to retain surface moisture;

(iii) Heated to a temperature of at least 74˚C (165˚F) in all parts of the food; and

(iv) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

3. Plant Food Cooking for Hot Holding. Fruits and vegetables cooked for hot holding shall be cooked to a temperature of 57˚C (135˚F). (Pf)

4. Non-Continuous Cooking of Raw Animal Foods. Raw animal foods cooked using a non-continuous cooking process shall be:

(i) Subject to an initial heating process that is no longer than sixty minutes in duration; (P)

(ii) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 0080-04-09-.03(5)(a)4; (P)

(iii) After cooling, held frozen or cold, as specified for time/temperature control for safety food under 0080-04-09-.03(5)(a)6(i)(II); (P)

(iv) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least 74°C (165°F) for 15 seconds; (P)

(v) Cooled according to the time and temperature parameters specified for cooked time /temperature control for safety food under 0080-04-09-.03(5)(a)4 if not either hot held as specified under 0080-04-09-.03(5)(a)6(i)(I), served immediately, or held using time as a public health control as specified under 0080-04-09-.03(5)(a)9 after complete cooking; (P) and

(vi) Prepared and stored according to written procedures that:

(I) Have obtained prior approval from the commissioner; (Pf)

(II) Are maintained in the food establishment and are available to the commissioner upon request; (Pf)

(III) Describe how the requirements specified under subparts (i)-(v) of this part are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met; (Pf)

(IV) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under subpart (iv) of this part prior to being offered for sale or service; (Pf) and

(V) Describe how the foods, after initial heating but prior to cooking as specified under subpart (iv) of this part, are to be separated from ready-to-eat foods as specified under 0080-04-09-.03(3)(b). (Pf)

(b) Freezing.

1. Parasite Destruction.

(i) Except as specified in subpart (ii) of this part, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

(I) Frozen and stored at a temperature of -20°C (-4°F) or below for a minimum of 168 hours (7 days) in a freezer; (P)

(II) Frozen at -35°C (-31°F) or below until solid and stored at -35°C (-31°F) or below for a minimum of 15 hours; (P) or

(III) Frozen at -35°C (-31°F) or below until solid and stored at -20°C (-4°F) or below for a minimum of 24 hours. (P)

(ii) Subpart (i) of this part does not apply to:

(I) Molluscan shellfish;

(II) Tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), Scallops consisting only of the shucked abductor muscle, or Thunnus thynnus (Bluefin tuna, Northern); or

(III) Aquacultured fish, such as salmon, that:

I. If raised in open water, are raised in net-pens, or

II. Are raised in land-based operations such as ponds or tanks, and

III. Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

(IV) Fish eggs that have been removed from the skein and rinsed.

2. Records, Creation and Retention.

(i) Except as specified in 0080-04-09-.03(4)(b)1(ii) and subpart (ii) of this part, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish. (Pf)

(ii) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 0080-04-09-.03(4)(b)1 may substitute for the records specified under subpart (i) of this part.

(iii) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 0080-04-09-.03(4)(b)1(ii)(III), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 0080-04-09-.03(4)(b)1(ii)(III) shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish. (Pf)

3. Preparation for Immediate Service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

(c) Reheating for Hot Holding.

1. Except as specified under parts 1 and 3 and in part 5 of this subparagraph, time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74˚C (165˚F) for 15 seconds. (P)

2. Except as specified under part 3 of this subparagraph, time/temperature control for safety food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74˚C (165˚F) and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating. (P)

3. Ready-to-eat food taken from a commercially processed, heremetically-sealed container, or from an intact package from a food processing plant that is inspected by the food commissioner that has jurisdiction over the plant, shall be heated to a temperature of at least 57˚C (135˚F) for hot holding. (P)

4. Reheating for hot holding as specified under parts 1 through 3 of this subparagraph shall be completed within two hours and the time the food is between 5ºC (41°F) or 7°C (45°F) and the temperatures specified under parts 1 through 3 of this subparagraph shall not exceed two hours. (P)

5. Remaining unsliced portions of meat roasts that are cooked as specified under 0080-04-09-.03(4)(a)1(ii) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 0080-04-09-.03(4)(a)1(ii).

(d) Other Methods. Treating Juice. Juice packaged in a food establishment shall be:

1. Treated under a HACCP PLAN as specified in 0080-04-09-.08(2)(d)2-5 to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; (P) or

2. Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance: (Pf)

(i) As specified under 0080-04-09-.03(6)(c), (Pf) and

(ii) As specified in 21 CFR 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." (Pf)

(5) Limitation of Growth of Organisms of Public Health Concern.

(a) Temperature and Time Control.

1. Frozen Food. Stored frozen foods shall be maintained frozen.

2. Time/Temperature Control for Safety Food, Slacking. Frozen time/temperature control for safety food that is slacked to moderate the temperature shall be held:

(i) Under refrigeration that maintains the food temperature at 5ºC (41ºF) or less.

(ii) At any temperature if the food remains frozen.

3. Thawing. Except as specified in subpart (iv) of this part, time/temperature control for safety food shall be thawed:

(i) Under refrigeration that maintains the food temperature at 5ºC (41ºF) or less.

(ii) Completely submerged under running water:

(I) At a water temperature of 21°C (70°F) or below,

(II) With sufficient water velocity to agitate and float off loose particles in an overflow,

(III) Such that for ready-to-eat food, the temperature of thawed portions do not rise above 5°C (41°F), and

(IV) Such that for raw animal food requiring cooking as specified under 0080-04-09-.03(4)(a)1(i) or (ii), thawed portions are not above 5°C (41°F) , for more than four hours including:

I. The time the food is exposed to the running water and the time needed for preparation for cooking, or

II. The time it takes under refrigeration to lower the food temperature to 5°C (41°F);

(iii) As part of a cooking process if the food that is frozen is:

(I) Cooked as specified under 0080-04-09-.03(4)(a)1(i) or (ii) or under 0080-04-09-.03(4)(a)2, or

(II) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(iv) Using any procedure if a portion of frozen ready-eat-food is thawed and prepared for immediate service in response to an individual consumer's order.

4. Cooling.

(i) Cooked time/temperature control for safety food shall be cooled:

(I) Within two hours from 57ºC (135ºF) to 21ºC (70ºF); (P) and

(II) Within a total of six hours from 57°C (135°F) to 5°C (41ºF) or less. (P)

(ii) Time/temperature control for safety food shall be cooled within four hours to 5°C (41°F) or less, if prepared from ingredients at ambient temperature such as reconstituted foods and canned tuna. (P)

(iii) Except as specified under subpart (iv) of this part, a time/temperature control for safety food received in compliance with laws allowing a temperature above 5°C (41°F) during shipment from the supplier as specified in under 0080-04-09-.03(2)(b)1(ii), shall be cooled within four hours to 5°C (41°F) or less. (P)

(iv) Raw eggs shall be received as specified under 0080-04-09-.03(2)(b)1(iii) and immediately placed in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)

5. Cooling Methods.

(i) Cooling shall be accomplished in accordance with the time and temperature criteria specified under 0080-04-09-.03(5)(a)4 by using one or more of the following methods based on the type of food being cooled:

(I) Placing the food in shallow pans; (Pf)

(II) Separating the food into smaller or thinner portions; (Pf)

(III) Using rapid cooling equipment; (Pf)

(IV) Stirring the food in a container placed in an ice water bath; (Pf)

(V) Using containers that facilitate heat transfer; (Pf)

(VI) Adding ice as an ingredient; (Pf) or

(VII) Other effective methods. (Pf)

(ii) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(I) Arranged in the equipment to provide maximum heat transfer through the container walls; and

(II) Loosely covered, or uncovered if protected from overhead contamination as specified under 0080-04-09-.03(3)(e)1(i)(II), during the cooling period to facilitate heat transfer from the surface of the food.

6. Time/Temperature Control for Safety Food, Hot and Cold Holding.

(i) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 0080-04-09-.03(5)(a)9, and except as specified under subpart (ii) and in subpart (iii) of this part, time/temperature control for safety food shall be maintained:

(I) At 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified in 0080-04-09-.03(4)(a)1(ii) or reheated as specified in 0080-04-09-.03(4)(c)5 may be held at a temperature of 54°C (130°F) or above; (P) or

(II) At 5°C (41°F) or less. (P)

(ii) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 5°C (41°F) or less. (P)

(iii) Time/temperature control for safety food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subpart (i) of this part, while contained within specially designed equipment that complies with the design and construction requirements as specified under 0080-04-09-.04(2)(d)3(v).

7. Ready-to-Eat, Time/Temperature Control for Safety Food Date Marking.

(i) Except when packaging food using a reduced oxygen packing method as specified under 0080-04-09-.03(5)(b)2, and except as specified in subparts (iv) and (v) of this part, refrigerated, ready-to-eat, time/temperature control for safety

food prepared and held in a food establishment for more than 24 hours shall be marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combination of 5°C (41°F) or less for a maximum of 7 days. The day of preparation shall be counted as day 1. (Pf)

(ii) Except as specified in subparts (iv) – (vi) of this part, refrigerated, ready-to-eat, time/temperature control for safety food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subpart (i) of this part and: (Pf)

(I) The day the original container is opened in the food establishment shall be counted as day 1; (Pf) and

(II) The day or date marked by the food establishment shall not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. (Pf)

(iii) A refrigerated, ready-to-eat, time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient. (Pf)

(iv) A date marking system that meets the criteria stated in subparts (i) and (ii) of this part may include:

(I) Using a method approved by the commissioner for refrigerated, ready-to-eat time/temperature control for safety food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(II) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subpart (i) of this part;

(III) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subpart (ii) of this part; or

(IV) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the commissioner upon request.

(v) Subparts (i) and (ii) of this part do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(vi) Subpart (ii) of this part does not apply to the following foods prepared and packaged by a food processing plant inspected by the commissioner:

(I) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;

(II) Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

(III) Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;

(IV) Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;

(V) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods;

(VI) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers, and which retain the original casing on the product; and

(VII) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers.

8. Ready-to-Eat, Time/Temperature Control for Safety Food, Disposition.

(i) A food specified in 0080-04-09-.03(5)(a)7(i) or (ii) shall be discarded if it:

(I) Exceeds the temperature and time combination specified in 0080-04-09-.03(5)(a)7(i), except time that the product is frozen; (P)

(II) Is in a container or package that does not bear a date or day; (P) or

(III) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 0080-04-09-.03(5)(a)7(i). (P)

(ii) Refrigerated, ready-to-eat, time/temperature control for safety food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in 0080-04-09-.03(5)(a)7(i).

9. Time as a Public Health Control.

(i) Except as specified under subpart (iv) of this part, if time without temperature control is used as the public health control for a working supply of time/temperature control for safety food before cooking, or for ready-to-eat time/temperature control for safety food that is displayed or held for sale or service:

(I) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the commissioner upon request that specify: (Pf)

I. Methods of compliance with items (ii)(I)-(III) or (iii)(I)-(V) of this part; (Pf) and

II. Methods of compliance with 0080-04-09-.03(5)(a)4 for food that is prepared, cooked, and refrigerated before time is used as a public health control. (Pf)

(ii) If time without temperature control is used as the public health control up to a maximum of four hours:

(I) The food shall have an initial temperature of 5°C (41°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control; (P)

(II) The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control; (Pf)

(III) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control; (P) and

(IV) The food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded. (P)

(iii) If time without temperature control is used as the public health control up to a maximum of six hours:

(I) The food shall have an initial temperature of 5ºC (41ºF) or less when removed from temperature control and the food temperature shall not exceed 21ºC (70ºF) within a maximum time period of six hours; (P)

(II) The food shall be monitored to ensure the warmest portion of the food does not exceed 21ºC (70ºF) during the six hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 21ºC (70ºF) during the 6-hour holding period; (Pf)

(III) The food shall be marked or otherwise identified to indicate: (Pf)

I. The time when the food is removed from 5ºC (41ºF) or less cold holding temperature control, (Pf) and

II. The time that is six hours past the point in time when the food is removed from cold holding temperature control; (Pf)

(IV) The food shall be:

I. Discarded if the temperature of the food exceeds 21ºC (70ºF), (P) or

II. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six hours from the point in time when the food is removed from 5ºC (41ºF) or less cold holding temperature control; (P) and

(V) The food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded. (P)

(iv) A food establishment that serves a highly susceptible population shall not use time as specified under subpart (i), (ii) or (iii) of this part as the public health control for raw eggs.

(b) Specialized Processing Methods.

1. Variance Requirement. A food establishment shall obtain a variance from the

commissioner as specified in 0080-04-09-.08(1)(c)1 and under 0080-04-09-.08(1)(c)2 before: (Pf)

(i) Smoking food as a method of food preservation rather than as a method of flavor enhancement; (Pf)

(ii) Curing food; (Pf)

(iii) Using food additives or adding components such as vinegar: (Pf)

(I) As a method of food preservation rather than as a method of flavor enhancement, (Pf) or

(II) To render a food so that it is not time/temperature control of safety food; (Pf)

(iv) Packaging food using a reduced oxygen packing method except where the growth of and toxin formation by Clostridium botulinum and the growth of Listeria monocytogenes are controlled as specified under 0080-04-09-.03(5)(b)2; (Pf)

(v) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption; (Pf)

(vi) Custom processing animals that are for personal use as food and not for sale or service in a food establishment; (Pf)

(vii) Preparing food by another method that is determined by the commissioner to require a variance; (Pf) or

(viii) Sprouting seeds or beans. (Pf)

2. Clostridium botulinum and Listeria moncytogenes Controls. Reduced Oxygen Packaging Without a Variance, Criteria.

(i) Except for a food establishment that obtains a variance as specified under 0080-04-09-.03(5)(b)1, a food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes. (P)

(ii) A food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under 0080-04-09-.08(2)(d)4 and that: (Pf)

(I) Identifies the food to be packaged; (Pf)

(II) Except as specified under subparts (iii) – (v) of this part, requires that the packaged food shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: (Pf)

I. Has an A_W of 0.91 or less, (Pf)

II. Has a pH of 4.6 or less, (Pf)

III. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, (Pf) or

IV. Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables; (Pf)

(III) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: (Pf)

I. Maintain the food at 5°C (41°F) or below, (Pf) and

II. Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption; (Pf)

(IV) Limits the refrigerated shelf life to no more than 14 calendar days from packing to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; (P)

(V) Includes operational procedures that:

I. Prohibit contacting ready-to-eat food with bare hands as specified under 0080-04-09-.03(3)(a)1(ii), (Pf)

II. Identify a designated work area and the method by which: (Pf)

A. Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, (Pf) and

B. Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, (Pf) and

C. Delineate cleaning and sanitation procedures for food-contact surfaces; (Pf) and

(VI) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the: (Pf)

I. Concepts required for a safe operation, (Pf)

II. Equipment and facilities, (Pf) and

III. Procedures specified under item 2(ii)(V) of this subparagraph and 0080-04-09-.08(2)(d)4. (Pf)

(iii) Except for fish that is frozen before, during, and after packaging, a food establishment shall not package fish using a reduced oxygen packaging method. (P)

(iv) Except as specified under subpart (iii) of this part, a food establishment that packages food using a cook-chill or sous vide process shall:

(I) Implement a HACCP plan that contains the information as specified under 0080-04-09-.08(2)(d)4; (Pf)

(II) Ensure the food is:

I. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer, (Pf)

II. Cooked to heat all parts of the food to a temperature and for a time as specified under 0080-04-09-.03(4)(a)1, (Pf)

III. Protected from contamination before and after cooking as specified under 0080-04-09-.03(3) and (4), (P)

IV. Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 57°C (135°F), (P)

V. Cooled to 5°C (41°F) in the sealed package or bag as specified under 0080-04-09-.03(5)(a)4 and subsequently: (P)

VI. Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of packaging; (P)

VII. Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F), removed from refrigeration equipment that maintains a 1°C (34°F) food temperature and then held at 5°C (41°F) or less for no more than 72 hours, at which time the food must be consumed or discarded; (P)

VIII. Cooled to 3°C (38°F) or less within 24 hours of reaching 5°C (41°F) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded; (P) or

IX. Held frozen with no shelf life restriction while frozen until consumed or used. (P)

X. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily, (Pf)

XI. If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, (Pf) and

(III) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:

I. Make such records available to the commissioner upon request (Pf) and

II. Hold such records for at least six months; (Pf) and

(IV) Implement written operational procedures as specified under item 2(ii)(V) of this subparagraph and a training program as specified under item 2(ii)(VI) of this subparagraph.

(v) A food establishment that packages cheese using a reduced oxygen packaging

method shall:

(I) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses; (P)

(II) Have a HACCP plan that contains the information specified under 0080-04-09-.08(2)(d)4 and as specified under 0080-04-09-.03(5)(b)2(ii)(I), (III)I, (V) and (VI); (Pf)

(III) Labels the package on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; (Pf) and

(IV) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging. (Pf)

(6) Food Identity, Presentation, and On-Premises Labeling.

(a) Accurate Representation.

1. Standards of Identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and standards of identity or composition, and the general requirements in 21 CFR 130 – Food Standards: General and 9 CFR 319 Subpart A – General.

2. Honestly Presented.

(i) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(ii) Food or color additives, colored overwraps, or lights shall not be used to misrepresent the true appearance, color, or quality of a food.

(b) Labeling.

1. Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101 - Food labeling, and 9 CFR 317 Labeling, marking devices, and containers.

2. Label information shall include:

(i) The common name of the food, or absent a common name, an adequately descriptive identity statement;

(ii) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(iii) An accurate declaration of the quantity of contents;

(iv) The name and place of business of the manufacturer, packer, or distributor; and

(v) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient. (Pf)

(vi) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) – (5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

(vii) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

3. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(i) The manufacturer's or processor's label that was provided with the food; or

(ii) A card, sign, or other method of notification that includes the information specified under subparts 2(i), (ii), and (v) of this subparagraph.

4. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

(i) A health, nutrient content, or other claim is not made;

(ii) There are no state or local laws requiring labeling; and

(iii) The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

5. Other Forms of Information.

(i) If required by law, consumer warnings shall be provided.

(ii) Food establishment or manufacturers' dating information on foods shall not be concealed or altered.

(c) Consumer Advisory. Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.

1. Except as specified in 0080-04-09-.03(4)(a)1(iii) and 0080-04-09-.03(4)(a)1(iv)(IV) and under 0080-04-09-.03(8)(a)3, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in parts 2 and 3 of this subparagraph using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. (Pf)

2. Disclosure shall include:

(i) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)"; (Pf) or

(ii) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients. (Pf)

3. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

(i) Regarding the safety of these items, written information is available upon request; (Pf)

(ii) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; (Pf) or

(iii) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. (Pf)

(7) Contaminated Food. Disposition. Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.

(a) A food that is unsafe, adulterated, or not honestly presented as specified under 0080-04-09-.03(1) shall be discarded or reconditioned according to an approved procedure. (P)

(b) Food that is not from an approved source as specified under 0080-04-09-.03(2)(a) shall be discarded. (P)

(c) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 0080-04-09-.02(2)(b) shall be discarded. (P)

(d) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. (P)

(8) Special Requirements for Highly Susceptible Populations.

(a) Pasteurized Foods, Prohibited Re-Service, and Prohibited Food. In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:

(i) For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

(ii) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, 101.17(g) Food labeling, warning, notice, and safe handling statements, Juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under 0080-04-09-.03(4)(d)2 shall not be served or offered for sale; (P) and

(iii) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under 0080-04-09-.08(2)(d)2 - 5 and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, 120.24 Process controls. (P)

2. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: (P)

(i) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, (P) and

(ii) Except as specified in part 6 of this subparagraph, recipes in which more than one egg is broken and the egg are combined; (P)

3. The following foods shall not be served or offered for sale in a ready-to-eat form: (P)

(i) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartar, (P)

(ii) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; (P) and

(iii) Raw seed sprouts. (P)

4. Food employees shall not contact ready-to-eat food as specified under 0080-04-09-.03(3)(a)1(ii) and (v). (P)

5. Time only, as the public health control as specified under 0080-04-09-.03(5)(a)9(iv), shall not be used for raw eggs.

6. Subpart 2(ii) of this subparagraph does not apply if:

(i) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 0080-04-09-.03(4)(a)1(i)(I), and served immediately, such as an omelet, soufflé, or scrambled eggs; (P)

(ii) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

(iii) The preparation of the food is conducted under a HACCP plan that:

(I) Identifies the food to be prepared,

(II) Prohibits contacting ready-to-eat food with bare hands,

(III) Includes specifications and practices that ensure:

I. Salmonella Enteritidis growth is controlled before and after cooking, and

II. Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 0080-04-09-.03(4)(a)1(i)(II),

(IV) Contains the information specified under 0080-04-09-.08(2)(d)4 including procedures that:

I. Control cross contamination of ready-to-eat food with raw eggs, and

II. Delineate cleaning and sanitization procedures for food-contact surfaces, and

(V) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

7. Except as specified in part 8 of this subparagraph, food may be re-served as specified under 0080-04-09-.03(3)(f)4(ii)(I) and (II).

8. Food shall not be re-served under the following conditions:

(i) Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation shall not be re-served to others outside.

(ii) Packages of food from any patients, clients, or other consumers shall not be re-served to persons in protective environment isolation.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.04 EQUIPMENT AND UTENSILS.~~

~~(1) Materials.~~

~~(a) General. Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.~~

~~(b) Solder. If solder is used, it shall be composed of safe materials and be corrosion resistant.~~

~~(c) Wood. Hard maple or equivalent nonabsorbent wood that meets the general requirements set forth in Subparagraph 1.a. of this section may be used for cutting blocks, cutting boards, and bakers' tables. Wood shall not be used as a food-contact surface under other circumstances, except for contact with raw fruits, raw vegetables, and nuts in the shell.~~

~~(d) Plastics and Rubber Materials. Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in Subparagraph 1.a of this section, are permitted for repeated use.~~

~~(e) Cutting Surfaces. Cutting surfaces subject to scratching and scoring must be resurfaced so as to be easily cleaned, or be discarded when these surfaces can no longer be effectively cleaned and sanitized.~~

~~(f) Single-service articles. Single-service articles shall not be reused.~~

~~(2) Design and Fabrication.~~

~~(a) General. All equipment and utensils, including plastic-ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.~~

~~1. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficulty- to-clean internal corners and crevices.Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as icemakers, hot oil-cooking equipment, or hot oil filtering systems, such threads shall be minimized.~~

~~2. Equipment containing bearings and gears requiring lubricants not made of safe materials shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces shall be lubricated with materials meeting the requirements of 21 C.F.R. 178.3570.~~

3. Sinks and drain boards shall be sloped to drain and be self-draining.

(b) Accessibility. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

1. Without being disassembled; or

2. By dissembling without the use of tools; or

3. By easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

(c) Cleaned in Place (CIP). Equipment designed and constructed for CIP shall meet requirements equivalent to those contained in Section 4-203 of the FDA Food Service Sanitation Ordinance.

(d) Food Product Thermometers. Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to 2º F (= 1º C).

(e) Non-Food-Contact Surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(f) Ventilation Hoods. Ventilation hoods and devices, where installed, shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement, if not designed to be cleaned in place.

(g) Maintenance of Equipment and Utensils. All equipment and utensils shall be maintained in good repair to comply with the requirements of this code.

(3) Equipment Installation and Location.

(a) General. Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, water lines that are leaking or on which condensed water has accumulated, open stairwells, or other sources of contamination.

(b) Table-mounted equipment.

1. Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and adjacent areas.

2. Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a 4-inch (102 mm) clearance between the table or counter, except that if no part of the table under the equipment is more than 18 inches (457 mm) from cleaning access, the clearance space shall be three (3) inches (76mm) or more; or if no part of the table under the equipment is more than three (3) inches (76 mm) from cleaning access, the clearance space shall be two (2) inches (51 mm) from cleaning access, the clearance space shall be two (2) inches (51 mm) or more.

3. Equipment is portable within the meaning of Subparagraph 3 b (2) of this section if:

(i) It is small and light enough to be moved easily by one person; and

(ii) It has no utility connection, has a utility connection that disconnects quickly, or

~~has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning; and~~

~~(iii) It is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment and:~~

~~(I) Does not exceed 80 pounds [= 36 kilograms (kg)]; or~~

~~(II) Is equipped with a mechanical means of safely tilting the unit for cleaning.~~

~~(c) Floor-Mounted Equipment.~~

~~1. Floor-mounted equipment, unless easily movable shall be;~~

~~(i) Sealed to the floor; or~~

~~(ii) Elevated on legs to provide at least a 6-inch (152 mm) clearance between the floor and equipment, except that equipment may be elevated to provide at least a 4-inch (102 mm) clearance between the floor and equipment is more than six (6) inches (152 mm) from cleaning access.~~

~~(iii) Display shelving units, display refrigeration units, and display freezer units are exempt from the provisions of Subparagraph (3) (c) 1. (i) and (ii) of this section if they are installed so that the floor beneath the units can be cleaned.~~

~~2. Equipment is Easily Movable if:~~

~~(i) It is mounted on wheels or casters; and~~

~~(ii) It has no utility connection, has a utility connection that disconnects quickly, or has flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.~~

~~3. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch (0.8 mm) and, if exposed to seepage, the space shall be sealed.~~

~~(d) Aisles and working spaces. Aisles and working spaces between units of equipment and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food- contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks, and open-ended pallets shall be positioned to provide accessibility to working areas.~~

0080-4-9-.04 Equipment, Utensils, and Linens

(1) Materials for Construction and Repair.

(a) Multiuse.

1. Characteristics.

(i) Materials that are used in the construction of utensils and food-contact surfaces of equipment shall not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: (P)

(I) Safe; (P)

(II) Durable, corrosion-resistant, and nonabsorbent;

(III) Sufficient in weight and thickness to withstand repeated warewashing;

(IV) Finished to have a smooth, easily cleanable surface; and

(V) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.

(ii) Cast Iron, Use Limitation.

(I) Except as specified in items (II) and (III) of this subpart, cast iron shall not be used for utensils or food-contact surfaces of equipment.

(II) Cast iron may be used as a surface for cooking.

(III) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(iii) Lead, Use Limitation.

(I) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories: (P)

Utensil Category	Ceramic Article Description	Maximum Lead Mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls > 1.1 Liter (1.16 Quart)	1
Small Hollowware (excluding cups & mugs)	Bowls < 1.1 Liter (1.16 Quart)	2.0
Flat Tableware	Plates, Saucers	3.0

(II) Pewter alloys containing lead in excess of 0.05% shall not be used as a food-contact surface. (P)

(III) Solder and flux containing lead in excess of 0.2% shall not be used as a food-contact surface.

(iv) Copper, Use Limitation.

(I) Except as specified in item (II) of this subpart, copper and copper alloys such as brass shall not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(II) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

(v) Galvanized Metal, Use Limitation. Galvanized metal shall not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

(vi) Sponges, Use Limitation. Sponges shall not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(vii) Wood, Use Limitation.

(I) Except as specified in items (II), (III) and (IV) of this subpart, wood and wood wicker shall not be used as a food-contact surface.

(II) Hard maple or an equivalently hard, close-grained wood may be used for:

I. Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

II. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.

(III) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(IV) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

I. Untreated wood containers; or

II. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.

(viii) Nonstick Coatings, Use Limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

(ix) Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) Single Service and Single-Use.

1. Characteristics. Materials that are used to make single-service and single-use articles:

(i) Shall not:

(I) Allow the migration of deleterious substances, (P) or

(II) Impart colors, odors, or tastes to food; and

(ii) Shall be:

(I) Safe, (P) and

(II) Clean.

(2) Design and Construction.

(a) Durability and Strength.

1. Equipment and Utensils. Equipment and Utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

2. Food temperature measuring devices shall not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used. (P)

(b) Cleanability.

1. Food-Contact Surfaces.

(i) Multiuse food-contact surfaces shall be:

(I) Smooth; (Pf)

(II) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections; (Pf)

(III) Free of sharp internal angles, corners, and crevices; (Pf)

(IV) Finished to have smooth welds and joints; (Pf) and

(V) Except as specified in subpart (ii) of this part, accessible for cleaning and inspection by one of the following methods:

I. Without being disassembled, (Pf)

II. By disassembling without the use of tools, (Pf) or

III. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches. (Pf)

(ii) Item (i)(V) of this part does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.

2. CIP Equipment.

(i) CIP equipment shall meet the characteristics specified under 0080-4-9-.04(2)(b)1 and shall be designed and constructed so that:

(I) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces, (Pf) and

(II) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(ii) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

3. "V" Threads, Use Limitation. Except for hot oil cooking or filtering equipment, "V" type

threads shall not be used on food-contact surfaces.

4. Hot Oil Filtering Equipment. Hot oil filtering equipment shall meet the characteristics specified under 0080-4-9-.04(2)(b)1 or 2 and shall be readily accessible for filter replacement and cleaning of the filter.

5. Can Openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

6. Nonfood-contact surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

7. Kick Plates, Removable. Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(i) Removable by one of the methods specified under 0080-4-9-.04 (2)(b)1(i)(V) or capable of being rotated open; and

(ii) Removable or capable of being rotated open without unlocking equipment doors.

8. Ventilation Hood Systems, Filters. Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(c) Accuracy.

1. Temperature Measuring Devices, Food.

(i) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to ±1°C in the intended range of use. (Pf)

(ii) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to ±2°F in the intended range of use. (Pf)

2. Temperature Measuring Devices, Ambient Air and Water.

(i) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to ±1.5°C in the intended range of use. (Pf)

(ii) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to ±3°F in the intended range of use. (Pf)

3. Pressure Measuring Devices, Mechanical Warewashing Equipment. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pound per square inch) or smaller and shall be accurate to ±14 kilopascals (±2 pounds per square inch) in the range indicated on the manufacturer's data plate.

(d) Functionality.

1. Ventilation Hood Systems, Drip Prevention. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

2. Equipment Openings, Closures and Deflectors.

(i) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(ii) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(iii) Except as specified under subpart (iv) of this part, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(iv) If a watertight joint is not provided:

(I) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

(II) The opening shall be flanged as specified under subpart (ii) of this part.

3. Dispensing Equipment, Protection of Equipment and Food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(i) The delivery tube, chute, orifice and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(ii) The delivery tube, chute and orifice shall be protected from manual contact such as by being recessed;

(iii) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(I) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or

(II) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

(iv) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(v) Dispensing equipment in which time/temperature control for safety food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under 0080-04-09-.03(5)(a)6 shall:

(I) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; (P) and

(II) Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 – Manual Food and Beverage Dispensing Equipment. (P)

4. Bearings and Gear Boxes, Leakproof. Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

5. Beverage Tubing, Separation. Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices shall not be installed in contact with stored ice.

6. Ice Units, Separation of Drains. Liquid waste drain lines shall not pass through an ice machine or ice storage bin.

7. Condenser Unit, Separation. If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

8. Molluscan Shellfish Tanks.

(i) Except as specified under subpart (ii) of this part, molluscan shellfish life support system display tanks shall not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only. (P)

(ii) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the commissioner as specified in 0080-04-09-.08(1)(c)1 and a HACCP plan that: (Pf)

(I) Is submitted by the permit holder and approved as specified under 0080-04-09-.08(1)(c)2; (Pf) and

(II) Ensures that:

I. Water used with fish other than molluscan shellfish does not flow into the molluscan tank, (Pf)

II. The safety and quality of the shellfish as they were received are not compromised by the use of the tank, (Pf) and

III. The identity of the source of the shellstock is retained as specified under 0080-04-09-.03(2)(c)2. (Pf)

9. Temperature Measuring Devices.

(i) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(ii) Except as specified in subpart (iii) of this part, cold or hot holding equipment used for time/temperature control for safety food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(iii) Subpart (ii) of this part does not apply to equipment for which the placement of a

temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

(iv) Temperature measuring devices shall be designed to be easily readable.

(v) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1˚C or 2˚F in the intended range of use. (Pf)

10. Warewashing Machines, Data Plate Operating Specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

(i) Temperatures required for washing, rinsing, and sanitizing;

(ii) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(iii) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

11. Warewashing Machines, Internal Baffles. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

12. Warewashing Machines, Temperature Measuring Devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(i) In each wash and rinse tank; (Pf) and

(ii) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank. (Pf)

13. Manual Warewashing Equipment, Heaters and Baskets. If hot water is used for sanitation in manual warewashing operations, the sanitizing compartment of the sink shall be:

(i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77˚C (171˚F); (Pf) and

(ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water. (Pf)

14. Warewashing Machines, Automatic Dispensing of Detergents and Sanitizers. A warewashing machine that is installed after adoption of these regulations, shall be equipped to:

(i) Automatically dispense detergents and sanitizers; (Pf) and

(ii) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles. (Pf)

15. Warewashing Machine Flow Pressure Device.

(i) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

(ii) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(iii) Subparts (i) and (ii) of this part do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

16. Warewashing Sinks and Drainboards, Self-Draining. Warewashing sinks and drainboards of warewashing sinks and machines shall be self-draining.

17. Equipment Compartments, Drainage. Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

18. Case Lot Handling Apparatuses, Movability. Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

(e) Acceptability. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with 0080-04-09-.04(1) and (2).

(3) Numbers and Capacities.

(a) Equipment.

1. Cooling, Heating, and Holding Capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under 0080-04-09-.03. (Pf)

2. Manual Warewashing, Sink Compartment Requirements.

(i) A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. (Pf)

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. (Pf)

(iii) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

(I) High-pressure detergent sprayers;

(II) Low- or line-pressure spray detergent foamers;

(III) Other task-specific cleaning equipment;

(IV) Brushes or other implements.

3. Drainboards. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be

provided for necessary utensil holding before cleaning and after sanitizing.

4. Ventilation Hood Systems, Adequacy. Ventilation hood systems and devices shall prevent grease or condensation from collecting on equipment, walls, and ceilings.

5. Clothes Washers and Dryers.

(i) Except as specified in subpart (ii) of this part, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(ii) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under 0080-04-09-.04(9)(a)2, a mechanical clothes washer and dryer need not be provided.

(b) Utensils, Temperature Measuring Devices, and Testing Devices.

1. Utensils, Consumer Self-Service. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar. (Pf)

2. Food Temperature Measuring Devices.

(i) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under 0080-04-09-.03. (Pf)

(ii) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets. (Pf)

3. Temperature Measuring Devices, Manual Warewashing. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

4. Sanitizing Solutions, Testing Devices. A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided. (Pf)

(4) Location and Installation.

(a) Location.

1. Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(i) Except as specified in subpart (ii) of this part, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles shall not be located:

(I) In locker rooms;

(II) In toilet rooms;

(III) In garbage rooms;

(IV) In mechanical rooms;

(V) Under sewer lines that are not shielded to intercept potential drips;

(VI) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(VII) Under open stairwells; or

(VIII) Under other sources of contamination.

(ii) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(iii) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(b) Installation.

1. Fixed Equipment, Spacing or Sealing.

(i) Equipment that is fixed because it is not easily movable shall be installed so that it is:

(I) Spaced to allow access for cleaning along the sides, behind, and above the equipment;

(II) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(III) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(ii) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(I) Sealed; or

(II) Elevated on legs as specified under 0080-04-09-.04(4)(b)2(iv).

2. Fixed Equipment, Elevation or Sealing.

(i) Except as specified in subparts (ii) and (iii) of this part, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment.

(ii) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(iii) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

(iv) Except as specified in subpart (v) of this part, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.

(v) The clearance space between the table and counter-mounted equipment may be:

(I) 7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or

(II) 5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

(5) Maintenance and Operation.

(a) Equipment.

1. Good Repair and Proper Adjustment.

(i) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under 0080-04-09-.04(1) and (2).

(ii) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(iii) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

2. Cutting Surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

3. Microwave Ovens. Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4. Warewashing Equipment, Cleaning Frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under 0080-04-09-.04(3)(a)3 shall be cleaned:

(i) Before use;

(ii) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(iii) If used, at least every 24 hours.

5. Warewashing Machines, Manufacturers' Operating Instructions.

(i) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(ii) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

6. Warewashing Sinks, Use Limitation.

(i) A warewashing sink shall not be used for handwashing as specified under 0080-04-09-.02(3)(d).

(ii) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 0080-04-09-.04(5)(a)4 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under 0080-04-09-.04(7) before and after using the sink to wash produce or thaw food.

7. Warewashing Equipment, Cleaning Agents. When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in 0080-04-09-.04(3)(a)2(iii) shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions. (Pf)

8. Warewashing Equipment, Clean Solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

9. Manual Warewashing Equipment, Wash Solution Temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions. (Pf)

10. Mechanical Warewashing Equipment, Wash Solution Temperature.

(i) The temperature of the wash solution in spray type warewashers that use hot water to sanitize shall not be less than:

(I) For a stationary rack, single temperature machine, 74°C (165°F); (Pf)

(II) For a stationary rack, dual temperature machine, 66°C (150°F); (Pf)

(III) For a single tank, conveyor, dual temperature machine, 71°C (160°F); (Pf) or

(IV) For a multitank, conveyor, multitemperature machine, 66°C (150°F). (Pf)

(ii) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize shall not be less than 49°C (120°F). (Pf)

11. Manual Warewashing Equipment, Hot Water Sanitization Temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above. (P)

12. Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(i) Except as specified in subpart (ii) of this part, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold shall not be more than 90°C (194°F), or less than: (Pf)

(I) For a stationary rack, single temperature machine, 74°C (165°F); (Pf) or

(II) For all other machines, 82°C (180°F). (Pf)

(ii) The maximum temperature specified under subpart (i) of this part, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

13. Mechanical Warewashing Equipment, Sanitization Pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control value, shall be within the range specified on the machine manufacturer's data plate and shall not be less than 35 kilopascals (5 pounds per square inch) or more than 200 kilopascals (30 pounds per square inch).

14. Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under 0080-04-09-.04(7)(c)3 shall meet the criteria specified under 0080-04-09-.07(2)(d)1 Sanitizers, Criteria, shall be used in accordance with the EPA-registered label use instructions, and shall be used as follows: (P)

(i) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart; (P)

Concentration Range mg/L	Minimum Temperature pH 10 or less °C (°F)	pH 8 or less °C (°F)
25 -49	49 (120)	49 (120)
50 -99	38 (100)	24 (75)
100	13 (55)	13 (55)

(ii) An iodine solution shall have a:

(I) Minimum temperature of 20°C (68°F), (P)

(II) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, (P) and

(III) Concentration between 12.5 mg/L and 25 mg/L; (P)

(iii) A quaternary ammonium compound solution shall:

(I) Have a minimum temperature of 24°C (75°F), (P)

(II) Have a concentration as specified under 0080-04-09-.07(2)(d)1 and as indicated by the manufacturer's use directions included in the labeling, (P) and

(III) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; (P)

(iv) If another solution of a chemical specified under subparts (i) - (iii) of this part is used, the permit holder shall demonstrate to the commissioner that the solution achieves sanitization and the use of the solution shall be approved; (P) or

(v) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions. (P)

15. Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

16. Warewashing Equipment, Determining Chemical Sanitizer Concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device. (Pf)

(b) Utensils and Temperature and Pressure Measuring Devices.

1. Good Repair and Calibration.

(i) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under 0080-04-09-.04(1) and (2) or shall be discarded.

(ii) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy. (Pf)

(iii) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

2. Single-Service and Single-Use Articles, Required Use. A food establishment without facilities specified under 0080-04-09-.04(6) and (7) for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers. (P)

3. Single-Service and Single-Use Articles, Use Limitation.

(i) Single-service and single-use articles shall not be reused.

(ii) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

4. Shells, Use Limitation. Mollusk and crustacea shells shall not be used more than once as serving containers.

(6) Cleaning of Equipment and Utensils.

(a) Objective.

1. Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.

(i) Equipment food-contact surfaces and utensils shall be clean to sight and touch. (Pf)

(ii) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(iii) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(b) Frequency.

1. Equipment Food-Contact Surfaces and Utensils.

(i) Equipment food-contact surfaces and utensils shall be cleaned:

(I) Except as specified in subpart (ii) of this part, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; (P)

(II) Each time there is a change from working with raw foods to working with ready-to-eat foods; (P)

(III) Between uses with raw fruits and vegetables and with time/temperature control for safety food; (P)

(IV) Before using or storing a food temperature measuring device; (P) and

(V) At any time during the operation when contamination may have occurred. (P)

(ii) Item (i)(I) of this part does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under 0080-04-09-.03(4)(a)1 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

(iii) Except as specified in subpart (iv) of this part, if used with time/temperature control for safety food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours. (P)

(iv) Surfaces of utensils and equipment contacting time/temperature control for safety food may be cleaned less frequently than every four hours if:

(I) In storage, containers of time/temperature control for safety food and their contents are maintained at temperatures specified under 0080-04-09-.03 and the containers are cleaned when they are empty;

(II) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

I. The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours
>10.0°C - 12.8°C (>50°F - 55°F)	10 hours

II. The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.

(III) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat time/temperature control for safety food that is maintained at the temperatures specified under 0080-04-09-.03, are intermittently combined with additional supplies of the same food that is

at the required temperature, and the containers are cleaned at least every 24 hours;

(IV) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under 0080-04-09-.03;

(V) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

(VI) The cleaning schedule is approved based on consideration of:

I. Characteristics of the equipment and its use,

II. The type of food involved,

III. The amount of food residue accumulation, and

IV. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

(VII) In-use utensils are intermittently stored in a container of water in which the water is maintained at 57°C (135°F) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(v) Except when dry cleaning methods are used as specified under 0080-04-09-.04(6)(c)1, surfaces of utensils and equipment contacting food that is not time/temperature control for safety food shall be cleaned:

(I) At any time when contamination may have occurred;

(II) At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

(III) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(IV) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

I. At a frequency specified by the manufacturer, or

II. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

2. Cooking and Baking Equipment.

(i) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in 0080-04-09-.04(6)(b)1(iv)(VI).

(ii) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

3. Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(c) Methods.

1. Dry Cleaning.

(i) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not time/temperature control for safety food.

(ii) Cleaning equipment used in dry cleaning food-contact surfaces shall not be used for any other purpose.

2. Precleaning.

(i) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(ii) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

3. Loading of Soiled Items, Warewashing Machines. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(i) Exposes the items to the unobstructed spray from all cycles; and

(ii) Allows the items to drain.

4. Wet Cleaning.

(i) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(ii) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

5. Washing, Procedures for Alternative Manual Warewashing Equipment. If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done in accordance with the following procedures:

(i) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;

(ii) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and

(iii) Equipment and utensils shall be washed as specified under 0080-04-09-.04(6)(c)4(i).

6. Rinsing Procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or

a detergent-sanitizer solution by using one of the following procedures:

(i) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(I) A 3-compartment sink,

(II) Alternative manual warewashing equipment equivalent to a 3-compartment sink, or

(III) A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment.

(ii) Use of a detergent-sanitizer as specified under 0080-4-9-.04(5)(a)(15) if using:

(I) Alternative warewashing equipment as specified in 0080-4-9-.04(3)(a)(2)(iii) that is approved for use with a detergent-sanitizer, or

(II) A warewashing system for CIP equipment;

(iii) If using a warewashing machine that does not recycle the sanitizing solution as specified under subpart (iv) of this part, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

(I) Integrated in the application of the sanitizing solution, and

(II) Wasted immediately after each application; or

(iv) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

7. Returnables, Cleaning for Refilling.

(i) Except as specified in subparts (ii) and (iii) of this part, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant. (P)

(ii) A food-specific container for beverages may be refilled at a food establishment if:

(I) Only a beverage that is not a time/temperature control for safety food is used as specified under 0080-04-09-.03(3)(d)7(i).

(II) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;

(III) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(IV) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

(V) The container is refilled by:

I. An employee of the food establishment, or

II. The owner of the container if the beverage system includes a contamination-free transfer process that cannot be by-passed by the container owner.

(iii) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

(7) Sanitization of Equipment and Utensils.

(a) Objective – Food-Contact Surfaces and Utensils. Equipment food-contact surfaces and utensils shall be sanitized.

(b) Frequency – Before Use After Cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning. (P)

(c) Methods – Hot Water and Chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds and as specified under 0080-04-09-.04(5)(a)11;(P)

2. Hot water mechanical operations by being cycled through equipment that is set up as specified under 0080-04-09-.04(5)(a)5, 12, and 13 and achieving a utensil surface temperature of 71˚C (160˚F) as measured by an irreversible registering temperature indicator; (P) or

3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 0080-04-09-.04(5)(a)14. Contact times shall be consistent with those on EPA-registered label use instructions by providing:

(i) Except as specified under subpart (ii) of this part, a contact time of at least 10 seconds for a chlorine solution specified under 0080-04-09-.04(5)(a)14(i), (P)

(ii) A contact time of at least seven seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38˚C (100˚F) or a pH of 8 or less and a temperature of at least 24˚C (75˚F), (P)

(iii) A contact time of at least 30 seconds for other chemical sanitizing solutions, (P) or

(iv) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 0080-04-09-.01. (P)

(8) Laundering.

(a) Objective – Clean Linens. Clean linens shall be free from food residues and other soiling matter.

(b) Frequency – Specifications.

1. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

2. Cloth gloves used as specified in 0080-04-09-.03(3)(d)5(iv) shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.

3. Linens and cloth napkins that are used as specified under 0080-04-09-.03(3)(d)3 and

cloth napkins shall be laundered between each use.

4. Wet wiping cloths shall be laundered daily.

5. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

(c) Methods.

1. Storage of Soiled Linens. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

2. Mechanical Washing.

(i) Except as specified in subpart (ii) of this part, linens shall be mechanically washed.

(ii) In food establishments in which only wiping cloths are laundered as specified in 0080-04-09-.04(3)(a)5(ii) the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under 0080-04-09-.04(5)(a)4.

3. Use of Laundry Facilities.

(i) Except as specified in subpart (ii) of this part, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(ii) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

(9) Protection of Clean Items.

(a) Drying.

1. Equipment and Utensils, Air-Drying Required. After cleaning and sanitizing, equipment and utensils:

(i) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

(ii) Shall not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

2. Wiping Cloths, Air-Drying Locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in 0080-04-09-.04(3)(a)5(ii) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under 0080-04-09-.04(5)(a)14.

(b) Lubricating and Reassembling.

1. Food-Contact Surfaces. Lubricants as specified under 0080-04-09-.07(2)(e) shall be applied to food-contact surfaces that require lubrication in a manner that does not

contaminate food-contact surfaces.

2. Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

(c) Storing.

1. Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.

(i) Except as specified in subpart (iv) of this part, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(I) In a clean, dry location;

(II) Where they are not exposed to splash, dust, or other contamination; and

(III) At least 15 cm (6 inches) above the floor.

(ii) Clean equipment and utensils shall be stored as specified under subpart (i) of this part and shall be stored:

(I) In a self-draining position that allows air drying; and

(II) Covered or inverted.

(iii) Single-service and single-use articles shall be stored as specified under subpart (i) of this part and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(iv) Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under 0080-04-09-.04(2)(d)18.

2. Prohibitions.

(i) Except as specified in subpart (ii) of this part, cleaned and sanitized equipment, utensils, laundered linens, and single-services and single-use articles shall not be stored:

(I) In locker rooms;

(II) In toilet rooms;

(III) In garbage rooms;

(IV) In mechanical rooms;

(V) Under sewer lines that are not shielded to intercept potential drips;

(VI) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

(VII) Under open stairwells; or

(VIII) Under other sources of contamination.

(ii) Laundered linens and single-service and single-use article that are packaged or in a facility such as a cabinet may be stored in a locker room.

(d) Preventing Contamination.

1. Kitchenware and Tableware.

(i) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(ii) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(iii) Except as specified under subpart (ii) of this part, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

2. Soiled and Clean Tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

3. Preset Tableware.

(i) Except as specified in subpart (ii) of this part, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(ii) Preset tableware may be exposed if:

(I) Unused settings are removed when a consumer is seated; or

(II) Settings not removed when a consumer is seated are cleaned and sanitized before further use.

4. Rinsing Equipment and Utensils after Cleaning and Sanitizing. After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

(i) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under 0080-04-09-.04(2)(d) and 0080-04-09-.04(5)(a); and

(ii) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.05 CLEANING, SANITIZATION AND STORAGE OF EQUIPMENT AND UTENSILS.~~

~~(1) Equipment and Utensil Cleaning and Sanitization.~~

~~(a) Cleaning Frequency.~~

~~1. Utensils and food-contact surfaces of equipment shall be cleaned and sanitized:~~

~~(i) Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods;~~

~~(ii) After any interruption of operations during which time contamination may have occurred; and~~

(iii) After final use of each working day.

2. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food- contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

3. The food-contact surface of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once each day of use, except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all-baking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.

4. Non-food-contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(b) Wiping Cloths.

1. Cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in Subparagraph (1) (c) 8 of this section and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

2. Cloths or sponges used for cleaning non-food-contact surfaces of equipment shall be clean and rinsed as specified in Subparagraph (1) (b) 1 of this rule and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

3. Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

(c) Manual Cleaning and Sanitizing.

1. For manual cleaning and sanitizing of equipment and utensils, a sink with three compartments shall be provided and used. Sink compartments shall be large enough to accommodate the immersion of most equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Where immersion in sinks is impracticable (e.g., because equipment is too large), equipment and utensils shall be cleaned and sanitized manually or by pressure spray methods.

2. Drain boards or easily movable utensil tables of adequate size shall be provided for proper storage and handling of soiled utensils prior to cleaning and for cleaned utensils following sanitizing and shall be located so as not to interfere with proper use of the warewashing facilities.

3. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

4. The sinks shall be cleaned before use.

5. When a three-compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:

(i) Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration

~~indicated on the manufacturer's label; and~~

~~(ii) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and~~

~~(iii) Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in Section (1) (c) 8 (Items i thru v) of this rule.~~

~~6. When pressure spray methods are utilized for cleaning and sanitizing, the equipment and utensils shall be thoroughly flushed with a detergent-sanitizer solution until the article is free of visible food particles and soil. The detergent- sanitizer shall be used in accordance with the manufacturer's instructions and shall be of the type that does not require a potable water rinse when used according to those instructions.~~

~~7. The food-contact surfaces of all equipment and utensils shall be sanitized by:~~

~~(i) Immersion for at least 1/2 minute in a clean, hot water of temperature of at least 170º F (= 77º C); or~~

~~(ii) Immersion for at least 1 minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochloride and having a temperature of at least 75º F (= 24º C); or~~

~~(iii) Immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million of available iodine, having a pH range which the manufacturer has demonstrated to be effective and at a temperature of at least 75º F (= 24º C); or~~

~~(iv) Immersion for at least, 1 minute in a clean solution containing 200 parts per million of a quarternary ammonium compound and having a temperature of at least 75º F (= 24º C). The quaternary ammonium compound used shall have been compounded by the manufacturer to assure effectiveness in waters up to 500 parts per million hardness at use concentration; or~~

~~(v) Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 C.F.R. 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75º (= 24º C) for 1 minute; or~~

~~(vi) Treatment with steam free from materials or additives other than those specified in 21 C.F.R. 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or~~

~~(vii) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under Section (1)(c)(8)(ii)(III) and (V) of this rule in the case of equipment too large to sanitize by immersion.~~

~~8. When hot water is used for sanitizing, the following equipment shall be provided and used:~~

~~(i) An integral heating device or fixture installed in, on or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170º (= 77º C);~~

~~(ii) A numerically scaled indicating thermometer, accurate to ± 3º F (=±1º C) convenient to the sink for frequent checks of water temperature; and~~

~~(iii) Utensil racks or baskets of such size and design to permit complete immersion~~

~~of utensils and equipment in the hot water.~~

~~9. Where chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 C.F.R. 178.1010 and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used.~~

~~(d) Mechanical Cleaning and Sanitizing. Mechanical cleaning and sanitizing equipment and practices shall conform to the provisions contained in Section 5-104 of the Model Food Service Sanitation Ordinance.~~

~~(e) Drying. Unless used immediately after sanitization, all equipment and utensils shall be air dried. Towel drying shall not be permitted.~~

~~(f) Retail food stores without equipment and utensil cleaning facilities. Retail food stores that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables.~~

~~(2) Equipment and Utensil Handling and Storage.~~

~~(a) Handling. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination.~~

~~(b) Storage.~~

~~1. Cleaned and sanitized utensils and equipment shall be stored at least six (6) inches (152 mm) above the floor in a clean, dry location in a way that protects them from splash, dust, and other means of contamination. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.~~

~~2. Utensils shall be air dried before being stored or shall be stored in a self-draining position.~~

~~3. Stored utensils shall be covered or inverted wherever practical.~~

~~(c) Single-Service Articles.~~

~~1. Single-service articles shall be stored in closed cartons or containers at least six (6) inches (152 mm) above the floor or on easily movable dollies, skids, racks, or open-ended pallets. Such storage shall protect the articles from contamination and shall not be located under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.~~

~~2. Single-service articles shall be handled in manner that prevents contamination of surfaces that may come in contact with food.~~

~~(d) Prohibited Storage Areas. Food equipment, utensils, or single-service articles shall not be stored in locker rooms, toilet rooms or their vestibules, garbage rooms, or mechanical rooms.~~

0080-04-09-.05 Water, Plumbing, and Waste

(1) Water.

(a) Source.

1. Approved System. Drinking water shall be obtained from an approved source that is:

(i) A public water system; (P) or

(ii) A nonpublic water system that is constructed, maintained, and operated according to law. (P)

2. System Flushing and Disinfection. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system. (P)

3. Bottled Drinking Water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled drinking water. (P)

(b) Quality.

1. Standards. Except as specified under 0080-04-09-.05(1)(b)2:

(i) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations and state drinking water quality standards; and (P)

(ii) Water from a nonpublic water system shall meet state drinking water quality standards. (P)

2. Nondrinking Water.

(i) A nondrinking water supply may be used only if its use is approved. (P)

(ii) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection. (P)

3. Sampling. Except when used as specified under 0080-04-09-.05(1)(b)2, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations. (Pf)

4. Sample Report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

(c) Quantity and Availability.

1. Capacity.

(i) The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment. (Pf)

(ii) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. (Pf)

2. Pressure. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under 0080-04-09-.05(1)(d)2(i) and (ii) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure. (Pf)

(d) Distribution, Delivery, and Retention.

1. System. Water shall be received from the source through the use of:

(i) An approved public water main; or (Pf)

(ii) One or more of the following that shall be constructed, maintained, and operated according to law: (Pf)

(I) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances, (Pf)

(II) Water transport vehicles, (Pf) or

(III) Water containers. (Pf)

2. Alternative Water Supply. Water meeting the requirements specified under 0080-04-09-.05(1)(a)-(c) shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(i) A supply of containers of commercially bottled drinking water; (Pf)

(ii) One or more closed portable water containers; (Pf)

(iii) An enclosed vehicular water tank; (Pf)

(iv) An on-premises water storage tank; or (Pf)

(v) Piping, tubing, or hoses connected to an adjacent approved source. (Pf)

(2) Plumbing System.

(a) Materials – Approved.

1. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law. (P)

2. A water filter shall be made of safe materials. (P)

(b) Design, Construction, and Installation.

1. Approved System and Cleanable Fixtures.

(i) A plumbing system shall be designed, constructed, and installed according to law. (P)

(ii) A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.

2. Handwashing Sink, Installation.

(i) A handwashing sink shall be equipped to provide water at a temperature of at least 38°C (100°F) through a mixing valve or combination faucet. (Pf)

(ii) A steam-mixing valve shall not be used at a handwashing sink.

(iii) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(iv) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

3. Backflow Prevention, Air Gap. An air gap between the water supply inlet and the flood

level rim of the plumbing fixture equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and shall not be less than 25 mm (1 inch). (P)

4. Backflow Prevention Device, Design Standard. A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device. (P)

5. Conditioning Device, Design. A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(c) Numbers and Capacities.

1. Handwashing Sinks.

(i) Except as specified in subpart (ii) of this part, at least one handwashing sink, a number of handwashing sinks necessary for their convenient use by employees in areas specified under 0080-04-09-.05(2)(d)1, and not fewer than the number of handwashing sinks required by law shall be provided. (Pf)

(ii) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.

(iii) If approved, when food exposure is limited and handwashing sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

2. Toilets and Urinals. At least one toilet and not fewer than the toilets required by law shall be provided. If the food service establishment has more than 16 seats, two restrooms must be available. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law.

3. Service Sink.

(i) At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(ii) Toilets and urinals shall not be used as a service sink for the disposal of mop water and similar liquid waste.

4. Backflow Prevention Device, When Required. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(i) Providing an air gap as specified under 0080-04-09-.05(2)(b)3; (P) or

(ii) Installing an approved backflow prevention device as specified under 0080-04-09-.05(2)(b)4. (P)

5. Backflow Prevention Device, Carbonator.

(i) If not provided with an air gap as specified under 0080-04-09-.05(2)(b)3, a dual

check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4 mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

(ii) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under (i) of this part.

(d) Location and Placement.

1. Handwashing sinks shall be located:

(i) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas; (Pf) and

(ii) In, or immediately adjacent to, toilet rooms. (Pf)

2. Backflow Prevention Device, Location. A backflow prevention device shall be located so that it may be serviced and maintained.

3. Conditioning Device, Location. A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

(e) Operation and Maintenance.

1. Using a Handwashing Sink.

(i) A handwashing sink shall be maintained so that it is accessible at all times for employee use. (Pf)

(ii) A handwashing sink shall not be used for purposes other than handwashing. (Pf)

(iii) An automatic handwashing facility shall be used in accordance with manufacturer's instructions. (Pf)

2. Prohibiting a Cross Connection.

(i) A person shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality. (P)

(ii) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water. (Pf)

3. Scheduling Inspection and Service for a Water System Device. A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge. (Pf)

4. Water Reservoir of Fogging Devices, Cleaning.

(i) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(I) Maintained in accordance with manufacturer's specifications; (P) and

(II) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subpart (ii) of this part, whichever is more stringent. (P)

(ii) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(I) Draining and complete disassembly of the water and aerosol contact parts; (P)

(II) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution; (P)

(III) Flushing the complete system with water to remove the detergent solution and particulate accumulation; (P) and

(IV) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution. (P)

5. System Maintained in Good Repair. A plumbing system shall be:

(i) Repaired according to law; (P) and

(ii) Maintained in good repair. (P)

(3) Mobile Water Tanks and Mobile Food Establishment Water Tank.

(a) Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

1. Safe; (P)

2. Durable, corrosion-resistant, and nonabsorbent; and

3. Finished to have a smooth, easily cleanable surface.

(b) Design and Construction.

1. Enclosed System, Sloped to Drain. A mobile water tank shall be:

(i) Enclosed from the filling inlet to the discharge outlet; and

(ii) Sloped to an outlet that allows complete drainage of the tank.

2. Inspection and Cleaning Port, Protected and Secured. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(i) Flanged upward at least 13 mm (one-half inch); and

(ii) Equipped with a port cover assembly that is:

(I) Provided with a gasket and a device for securing the cover in place, and

(II) Flanged to overlap the opening and sloped to drain.

3. "V" Type Threads, Use Limitation. A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

4. Tank Vent, Protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(i) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(ii) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

5. Inlet and Outlet, Sloped to Drain.

(i) A water tank and its inlet and outlet shall be sloped to drain.

(ii) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

6. Hose, Construction and Identification. A hose used for conveying drinking water from a water tank shall be:

(i) Safe; (P)

(ii) Durable, corrosion-resistant, and nonabsorbent;

(iii) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) Finished with a smooth interior surface; and

(v) Clearly and durably identified as to its use if not permanently attached.

(c) Numbers and Capacities.

1. Filter, Compressed Air. A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system. (P)

2. Protective Cover or Device. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

3. Mobile Food Establishment Tank Inlet. A mobile food establishment's water tank inlet shall be:

(i) 19.1 mm (three-fourths inch) in inner diameter or less; and

(ii) Provided with a hose connection of a size or type that will prevent its use for any other service.

(d) Operation and Maintenance.

1. System Flushing and Sanitization. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse. (P)

2. Using a Pump and Hoses, Backflow Prevention. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

3. Protecting Inlet, Outlet, and Hose Fitting. If not in use, a water tank and hose inlet and

outlet fitting shall be protected using a cover or device as specified under 0080-04-09-.05(3)(c)2.

4. Tank, Pump, and Hoses, Dedication.

(i) Except as specified in subpart (ii) of this part, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

(ii) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

(4) Sewage, Other Liquid Waste, and Rainwater.

(a) Mobile Holding Tank, Capacity and Drainage. A sewage holding tank in a mobile food establishment shall be:

1. Sized 15 percent larger in capacity than the water supply tank; and

2 Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(b) Retention Drainage and Delivery.

1. Establishment Drainage System. Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 0080-04-09-.05(2)(b)1(i).

2. Backflow Prevention.

(i) Except as specified in subparts (ii), (iii), and (iv) of this part, a direct connection shall not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

(ii) Subpart (i) of this part does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(iii) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(iv) If allowed by law, a warewashing or culinary sink may have a direct connection.

3. Grease Trap. If used, a grease trap shall be located to be easily accessible for cleaning.

4. Conveying Sewage. Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law. (P)

5. Removing Mobile Food Establishment Wastes. Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created. (Pf)

6. Flushing a Waste Retention Tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

(c) Approved Sewage Disposal System.

1. Sewage shall be disposed through an approved facility that is:

(i) A public sewage treatment plant; (P) or

(ii) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law. (P)

2. Other Liquid Wastes and Rainwater. Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

(5) Refuse, Recyclables, and Returnables.

(a) Facilities on the Premises.

1. Indoor Storage Area. If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 0080-04-09-.06(1)(a), 0080-04-09-.06(2)(a)1-8, 0080-04-09-.06(2)(b)5 and 6.

2. Outdoor Storage Surface. An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

3. Outdoor Enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

4. Receptacles.

(i) Except as specified in subpart (ii) of this part, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(ii) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

5. Outside Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(ii) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

6. Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(i) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(ii) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

(iii) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

7. Toilet Room Receptacle, Covered. A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

8. Cleaning Implements and Supplies.

(i) Except as specified in subpart (ii) of this part, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(ii) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

9. Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location.

(i) An area designated for refuse, recyclables, returnables, and, except as specified in subpart (ii) of this part, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(ii) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(iii) The location of receptacles and waste handling units for refuse, recyclables, and returnables shall not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

10. Storing Refuse, Recyclables, and Returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

11. Areas, Enclosures, and Receptacles, Good Repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

12. Outside Storage Prohibitions.

(i) Except as specified in subpart (ii) of this part, refuse receptacles not meeting the requirements specified under 0080-04-09-.05(5)(a)4(i) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue shall not be stored outside.

(ii) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

13. Covering Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(i) Inside the food establishment if the receptacles and units:

(I) Contain food residue and are not in continuous use; or

(II) After they are filled; and

(ii) With tight-fitting lids or doors if kept outside the food establishment.

14. Using Drain Plugs. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

15. Maintaining Refuse Areas and Enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under 0080-04-09-.06(5)(n), and clean.

16. Cleaning Receptacles.

(i) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under 0080-04-09-.05(4)(b)4.

(ii) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

(b) Removal.

1. Frequency. Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

2. Receptacles or Vehicles. Refuse, recyclables, and returnables shall be removed from the premises by way of:

(i) Portable receptacles that are constructed and maintained according to law; or

(ii) A transport vehicle that is constructed, maintained, and operated according to law.

(c) Facilities for Disposal and Recycling. Community or Individual Facility. Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.06 SANITARY FACILITIES AND CONTROLS.~~

~~(1) Water Supply.~~

~~(a) General. Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to law. All water provided from any source other than an approved public water supply shall have a bacteriological test at least annually or as often as deemed necessary by the Commissioner. The bacteriological test shall be conducted by an accredited laboratory and the laboratory report shall be available for review at the establishment at all times. If the laboratory report indicates that the water is unsafe, the operator of the establishment shall immediately make correction or provide safe water from other approved sources.~~

~~(b) Water Delivery. All potable water not provided to the retail food store directly from the source by pipe shall be delivered in a bulk water transport system and shall be transferred to a closed~~

water system. Both of these systems shall be constructed, maintained, and operated according to law.

(c) Water Under Pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

(d) Steam. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 C.F.R. 173.310.

(2) Sewage.

(a) General. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated according to law. Nonwater carried sewage disposal facilities are prohibited, except as permitted by the regulatory authority.

(3) Plumbing.

(a) General. Plumbing shall be sized, installed and maintained according to law. There shall be no cross-connection between the potable water supply and any other system containing;

1. Water of unknown or questionable origin, or

2. Contaminating or polluting substances.

(b) Nonpotable Water System. A nonpotable water system is permitted for air conditioning, equipment cooling, and fire protection, and shall be installed according to law. Nonpotable water shall not directly or indirectly contact food or equipment or utensils that contact food. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(c) Backflow. The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and fixture's flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device.

(d) Grease Traps. Grease traps, if used, shall be located to be easily accessible for cleaning.

(e) Garbage Grinders. Garbage grinders, if used, shall be installed and maintained according to law.

(f) Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a warewashing machine is located within five (5) feet (152 centimeters (cm)) of a trapped door drain, the warewasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted by law.

(4) Toilet Facilities.

(a) Toilet Installation. Toilet facilities shall be installed according to law, shall be at least one but not less than the number required by law, shall be conveniently located, and shall be accessible to employees at all times. Establishments constructed or extensively altered after August, 2002 shall provide toilet facilities for patrons of each sex, except that establishments with a seating capacity of sixteen (16) or less are exempt from this requirement, unless otherwise required by state law. Employees and patrons may use the same facilities.

(b) Toilet Design. Toilets and urinals shall be designed to be easily cleanable.

(c) Toilet Rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-

closing solid doors, except for louvers that may be necessary for ventilation systems.

(d) Toilet Facility Maintenance. Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

(5) Handwashing Facilities.

(a) Handwashing facility installation. Handwashing facilities shall be installed according to law, shall be at least one and not less than the number required by law, and shall be conveniently located to permit use by all employees in food preparation and warewashing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or their vestibules. Sinks used for food preparation or for warewashing shall not be used for washing of hands or for any other purpose.

(b) Handwashing Facility Faucets. Each handwashing facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self- closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

(c) Handwashing Supplies. A supply of hand-cleansing soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near each handwashing facility.

(d) Handwashing Facility Maintenance. Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(6) Garbage and Refuse.

(a) Containers.

1. Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-resistant containers that do not leak and do not absorb liquids. Plastics bags and wet strength paper bags may be used to line these containers. Such bags and durable plastic garbage and refuse containers may be used for storage inside the retail food store.

2. Containers used in food preparation and utensil washing areas shall be kept covered during nonworking hours and after they are filled.

3. Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight- fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

4. There shall be sufficient number of containers to hold all the garbage and refuse that accumulates.

5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, detergent, and hot water or steam, shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

~~(b) Storage.~~

~~1. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of non-rodent-resistant plastic containers, unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.~~

~~2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect and rodent resistant, and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency.~~

~~3. Outside storage areas or enclosures, if used, shall be kept clean and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency. Garbage and refuse containers, dumpsters, and compactor systems located outside, shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.~~

~~(c) Disposal.~~

~~1. Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.~~

~~2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration in accordance with law. Areas around incineration units shall be kept clean and orderly.~~

~~(7) Insect and Rodent Control.~~

~~(a) General. Effective measures shall be utilized to minimize the entry, presence, and propagation or rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.~~

~~(b) Openings. Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall be protected against the entry of insects by tight fitting, self-closing doors; closed windows; screening; controlled air currents; or other means. Screen doors shall be self-closing, and screens for windows, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks, Screening material shall be not less than 16 mesh to the inch.~~

0080-04-09-.06 Physical Facilities

(1) Materials for Construction and Repair.

(a) Indoor Areas. Surface Characteristics.

1. Except as specified in part 2 of this subparagraph, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(i) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;

(ii) Closely woven and easily cleanable carpet for carpeted areas; and

(iii) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment

servicing areas, and areas subject to flushing or spray cleaning methods.

2. In a temporary food establishment:

(i) If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other approved materials that are effectively treated to control dust and mud; and

(ii) Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

(b) Outdoor Areas. Surface Characteristics.

1. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

2. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

3. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under 0080-04-09-.05(5)(a)2 and 3.

(2) Design, Construction, and Installation.

(a) Cleanability.

1. Floors, Walls, and Ceilings. Except as specified under part 4 of this subparagraph and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

2. Floors, Walls, and Ceilings, Utility Lines.

(i) Utility service lines and pipes shall not be unnecessarily exposed.

(ii) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(iii) Exposed horizontal utility service lines and pipes shall not be installed on the floor.

3. Floor and Wall Junctures, Coved, and Enclosed or Sealed.

(i) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than one mm (one thirty-second inch).

(ii) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

4. Floor Carpeting, Restrictions, and Installation.

(i) A floor covering such as carpeting or similar material shall not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(ii) If carpeting is installed as a floor covering in areas other than those specified under subpart (i) of this part, it shall be:

(I) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(II) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

5. Floor Covering, Mats and Duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.

6. Wall and Ceiling Coverings and Coatings.

(i) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(ii) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

7. Walls and Ceilings, Attachments.

(i) Except as specified in subpart (ii) of this part, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(ii) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

8. Walls and Ceilings, Studs, Joists, and Rafters. Except for temporary food establishments, studs, joists, and rafters shall not be exposed in areas subject to moisture.

(b) Functionality.

1. Light Bulbs, Protective Shielding.

(i) Except as specified in subpart (ii) of this part, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(ii) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

(I) The integrity of the packages cannot be affected by broken glass falling onto them; and

(II) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(iii) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

2. Heating, Ventilating, Air Conditioning System Vents. Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

3. Insect Control Devices, Design and Installation.

(i) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(ii) Insect control devices shall be installed so that:

(I) The devices are not located over a food preparation area; and

(II) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

4. Toilet Rooms, Enclosed. Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

5. Outer Openings, Protected.

(i) Except as specified in subparts (ii), (iii), and (v) and under subpart (iv) of this part, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

(I) Filling or closing holes and other gaps along floors, walls, and ceilings;

(II) Closed, tight-fitting windows; and

(III) Solid, self-closing, tight-fitting doors.

(ii) Subpart (i) of this part does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(iii) Exterior doors used as exits need not be self-closing if they are:

(I) Solid and tight-fitting;

(II) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

(III) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(iv) Except as specified in subparts (ii) and (v) of this part, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under subpart (i) of this part, the openings shall be protected against the entry of insects and rodents by:

(I) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens;

(II) Properly designed and installed air curtains to control flying insects; or

(III) Other effective means.

(v) Subpart (iv) of this part does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

6. Exterior Walls and Roofs, Protective Barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

7. Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

8. Outdoor Walking and Driving Surfaces, Graded to Drain. Exterior walking and driving surfaces shall be graded to drain.

9. Outdoor Refuse Areas, Curbed and Graded to Drain. Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

10. Private Homes and Living or Sleeping Quarters, Use Prohibition. A private home, except as provided by T.C.A. § 53-8-117, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters shall not be used for conducting food establishment operations.

11. Living or Sleeping Quarters, Separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishments operations by complete partitioning and solid self-closing doors.

(3) Number and Capacities.

(a) Handwashing Sinks.

1. Handwashing sinks shall be provided as specified under 0080-04-09-.05(2)(c)1.

2. Handwashing Cleanser, Availability. Each handwashing sink or group of two adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

3. Hand Drying Provision. Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

(i) Individual, disposable towels;

(ii) A continuous towel system that supplies the user with a clean towel; or

(iii) A heated-air hand drying device; or

(iv) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

4. Handwashing Aids and Devices, Use Restrictions. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop

water or similar wastes, shall not be provided with the handwashing aids and devices required for a handwashing sink as specified under 0080-04-09-.06(3)(a)2 and 3 and 0080-04-09-.05(5)(a)6(iii).

5. Handwashing Signage. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

6. Disposable Towels, Waste Receptacle. A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under 0080-04-09-.05(5)(a)6(iii).

(b) Toilets and Urinals.

1. Toilets and urinals shall be provided as specified under 0080-04-09-.05(2)(c)2.

2. A supply of toilet tissue shall be available at each toilet. (Pf)

(c) Lighting. The light intensity shall be:

1. At least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

2. At least 215 lux (20 foot candles):

(i) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption,

(ii) Inside equipment such as reach-in and under-counter refrigerators; and

(iii) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

3. At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

(d) Ventilation. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

(e) Dressing Areas and Lockers.

1. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

2. Lockers or other suitable facilities shall be provided for the orderly storage of employee's clothing and other possessions.

(f) A service sink or curbed cleaning facility shall be provided as specified under 0080-04-09-.05(2)(c)3(i).

(4) Location and Placement.

(a) Handwashing sinks shall be conveniently located as specified under 0080-04-09-.05(2)(d)1.

(b) Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(c) Employee Accommodations.

1. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

2. Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

(d) Distressed Merchandise. Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles. (Pf)

(e) Refuse, Recyclables, and Returnables. Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 0080-04-09-.05(5)(a)9.

(5) Maintenance and Operation.

(a) Physical facilities shall be maintained in good repair.

(b) Cleaning, Frequency and Restrictions.

1. Physical facilities shall be cleaned as often as necessary to keep them clean.

2. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(c) Cleaning Floors, Dustless Methods.

1. Except as specified in part 2 of this subparagraph, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

2. Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(i) Without the use of dust-arresting compounds; and

(ii) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

1. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

2. If vented to the outside, ventilation systems shall not create a public health hazard or nuisance or unlawful discharge.

(e) Cleaning Maintenance Tools, Preventing Contamination. Food preparation sinks, handwashing sinks, and warewashing equipment shall not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid

wastes.

(f) Drying Mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Absorbent Materials on Floors, Use Limitation. Except as specified in 0080-04-09-.06(5)(c)2, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used on floors.

(h) Cleaning of Plumbing Fixtures. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

(i) Closing Toilet Room Doors. Except during cleaning and maintenance operations, toilet room doors as specified under 0080-04-09-.06(2)(b)4 shall be kept closed.

(j) Using Dressing Rooms and Lockers.

1. Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

2. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) Controlling Pests. The premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

1. Routinely inspecting incoming shipments of food and supplies;

2. Routinely inspecting the premises for evidence of pests;

3. Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 0080-04-09-.07(2)(b)2(iii) and 0080-04-09-.07(2)(f)2 and 3; and

4. Eliminating harborage conditions.

(l) Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(m) Storing Maintenance Tools. Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

1. Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

2. Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(n) Maintaining Premises, Unnecessary Items and Litter. The premises shall be free of:

1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

2. Litter.

(o) Prohibiting Animals.

1. Except as specified in parts 2 and 3 of this subparagraph, live animals shall not be allowed on the premises of a food establishment.

2. Live animals are allowed in the following situations if the owner or operator does not permit animals to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food-contact surfaces and does not permit animals to physically contact employees engaged in the preparation or handling of food:

(i) Fish or crustacea in aquariums or display tanks;

(ii) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and sentry dogs in outside fenced areas;

(iii) Service animals accompanying persons with disabilities in areas that are not used for food preparation;

(iv) Dogs (Canis lupus familiaris) and cats (Felis catus) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food establishment. Except for service animals described in subpart (iii) of this part, nothing in this chapter prohibits a food establishment from prohibiting dogs and cats in outdoor dining areas; and

(v) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

3. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

Authority: T.C.A. § 53-8-204.

~~0080-4-9-.07 CONSTRUCTION AND MAINTENANCE OF PHYSICAL FACILITIES.~~

~~(1) FLOORS.~~

~~(a) Floor Construction.~~

~~1. Except as specified in Subparagraph 1 (b) of this section, floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.~~

~~2. Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain.~~

~~3. In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be covered and sealed. In all other cases, the juncture between walls and floors shall be covered so as not to present an open seam of more than 1/32 inch (0.8 mm).~~

(b) Floor Carpeting. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation and warewashing areas, in food storage areas, or in toilet room areas where urinals or fixtures are located.

(c) Prohibited Floor Covering. Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth or similar materials shall not be used as floor coverings; however, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

(d) Mats and Duckboards. Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained in good repair.

(e) Utility Line Installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

(2) Walls and Ceilings.

(a) Maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(b) Construction. The walls, wall coverings and ceilings of walk-in refrigeration units, food preparation areas, warewashing areas and toilet rooms and their vestibules shall be smooth, nonabsorbent and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

(c) Exposed Construction. Studs, joists, and rafters shall not be exposed in those areas listed in Subparagraph 2 (b) of this section. If exposed in other rooms or areas, they shall be finished to provide a cleanable surface.

(d) Utility Line Installation. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in Subparagraph 2 (b) of this section. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

(e) Attachments. Light fixtures, vent covers, wall mounted fans, decorative materials, and similar attachments to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(f) Covering Material Installation. Wall and ceiling covering materials shall be attached and sealed in a manner to be easily cleanable.

(3) Cleaning Physical Facilities.

(a) General. Cleaning of floors, walls, and ceilings shall be done as often as necessary, but preferably during periods when the least amount of food is exposed, such as after closing. Only dustless methods of cleaning floors, cleaning, wet cleaning treated dust mops, or the use of dust-arresting sweeping compounds with brooms. Floors, mats, duckboards, walls, ceilings, and attachments (e.g., light fixtures, vent covers, wall mounted fans, and similar equipment), and decorative materials (e.g., signs and advertising materials) shall be kept clean.

(b) Service Sinks. At least one (1) service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops of similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or warewashing facilities, or food preparation sinks shall not be used for this purpose.

(4) Lighting.

(a) General.

1. Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles (215 lux) of light on all food preparation surfaces and at warewashing work levels.

2. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches (762 mm) from the floor:

(i) At least 20 foot candles (214 lux) of light in sales areas, utensil and equipment storage areas, and in handwashing and toilet areas; and

(ii) At least 10 foot candles (108 lux) of light in walk-in refrigeration units, dry food storage areas, and in all other areas.

(b) Protective Shielding.

1. Lamps located over or within food storage, food preparation, and food display facilities, and facilities where utensils and equipment are cleaned and stored shall be shielded, coated or otherwise shatter resistant.

2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(5) Ventilation.

(a) General. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create a harmful or unlawful discharge. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(6) Dressing Rooms and Locker Areas.

(a) Dressing Rooms and Areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, food storage, food display, warewashing, or storage of utensils and equipment.

(b) Locker Areas. Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may only be located in the designated dressing rooms or areas or, in food storage rooms or areas containing only completely packaged food or packaged single- service articles.

(7) Poisonous or Toxic Materials.

(a) Materials Permitted. Only those poisonous or toxic materials necessary and intended for the maintenance of the establishment, including the cleaning and sanitization of equipment and utensils and the control of insects and rodents, shall be present in retail food stores, except those items being stored or displayed for retail sale as described in Subparagraph 7 (e) of this section.

(b) Labeling of Materials. Containers of poisonous or toxic materials necessary for operational maintenance of the establishment shall be prominently and distinctly labeled in accordance with law. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents.

(c) Storage of Materials. Poisonous or toxic materials necessary for the maintenance of the establishment consist of the following two categories:

1. Insecticides and rodenticides;

2. Detergents, sanitizers, related cleaning or drying agents, and caustics, acids, polishes, and other chemicals. Materials in each of these two categories shall be stored and located to be physically separated from each other; shall be stored in cabinets or in similar physically separated compartments of facilities used for no other purpose; and, to preclude potential contamination, shall not be stored above or intermingled with food, food equipment, utensils, or single-service articles, except that this latter requirement does not prohibit the convenient availability of detergent sanitizers, or sanitizers at warewashing facilities.

(d) Use of Materials.

1. Sanitizers, cleaning compounds, or other compounds intended for use on food- contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees of other persons.

2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way other than in full compliance with the manufacturer's labeling.

(e) Storage and Display of Materials for Retail Sale. Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitioning, or dividers. These materials shall not be stored or displayed above food or single-service articles.

(f) First-Aid Supplies and Personal Medication. Retail food store employee first-aid supplies and personal medications shall be stored in a way that prevents them from contaminating food and food contact surfaces.

(8) Premises.

(a) General.

1. Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operation or maintenance of the establishment.

2. The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. The surfaces shall be graded to facilitate drainage.

3. The traffic of unnecessary persons through food-preparation and utensil-washing areas is prohibited.

(b) Living Areas. No operation of a retail food store shall be conducted in any room used as living or sleeping quarters. Retail food store operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

(c) Laundry Facilities.

1. If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work clothes used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

2. ~~Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.~~

(d) ~~Linens and Work Clothes Storage.~~

1. ~~Clean work clothes and linens, including articles such as wiping cloths, shall be stored in a clean place and protected from contamination until used.~~

2. ~~Soiled work clothes and linens, including articles such as wiping cloths, shall be kept in nonabsorbent containers or washable laundry bags until removed for laundering and shall be stored to prevent contamination of food, food equipment and utensils.~~

(e) ~~Cleaning Equipment Storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.~~

(f) ~~Animals.~~

1. ~~Live animals, with the exception of service dogs accompanying disabled persons, shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustaceans, shellfish, or fish in aquariums.~~

~~Live or dead fish bait shall be stored separately from food or food products.~~

~~Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons.~~

2. ~~While on duty, persons employed in the food operational areas of an establishment shall not care for or handle any pets, or patrol/sentry dogs.~~

0080-04-09-.07 Poisonous or Toxic Materials

(1) Labeling and Identification.

(a) Original Containers. Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label. Only those pesticides that have been registered with the EPA and with the Department shall be used. If the manufacturer's label is missing from a pesticide container, the container shall be identified with the manufacturer's product brand name, percentage of each active ingredient, and EPA registration number. (Pf)

(b) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material. (Pf)

(2) Operational Supplies and Applications.

(a) Storage. Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning; (P) and

2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This part does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food,

equipment, utensils, linens, and single-service and single-use articles. (P)

(b) Presence and Use.

1. Restriction.

(i) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.

(ii) Subpart (i) of this part does not apply to packaged poisonous or toxic materials that are for retail sale.

2. Conditions of Use. Poisonous or toxic materials shall be:

(i) Used according to:

(I) Law and this chapter,

(II) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment, (P)

(III) The conditions of certification, if certification is required, for use of the pest control materials, (P) and

(IV) Additional conditions that may be established by the commissioner; and

(ii) Applied so that:

(I) A hazard to employees or other persons is not constituted, (P) and

(II) Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by: (P)

I. Removing the items, (P)

II. Covering the items with impermeable covers, (P) or

III. Taking other appropriate preventive actions, (P) and

IV. Cleaning and sanitizing equipment and utensils after the application. (P)

(iii) A general use or restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide, and Rodenticide Act and Tennessee Rule Chapter 0080-06-16 Regulations Governing the Use of Pesticides. (Pf)

(c) Container Prohibitions. Poisonous or Toxic Material Containers. A container previously used to store poisonous or toxic materials shall not be used to store, transport, or dispense food. Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials. (P)

(d) Chemicals.

1. Sanitizers, Criteria. Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions). (P)

2. Chemicals for Washing, Treatment, Storage and Processing Fruits and Vegetables, Criteria.

(i) Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables. (P)

(ii) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone.

3. Boiler Water Additives, Criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler water additives. (P)

4. Drying Agents, Criteria. Drying agents used in conjunction with sanitization shall:

(i) Contain only components that are listed as one of the following:

(I) Generally recognized as safe for use in food as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, (P)

(II) Generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe, (P)

(III) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients, (P)

(IV) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175 178, (P) or

(V) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; (P) and

(ii) When sanitization is with chemicals, the approval required under item (i)(III) or (i)(V) of this part or the regulation as an indirect food additive required under item (i)(IV) of this part, shall be specifically for use with chemical sanitizing solutions. (P)

(e) Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces. (P)

(f) Pesticides.

1. Restricted use pesticides specified under 0080-04-09-.07(2)(b)2(iii) shall meet the requirements specified in 40 CFR 152 Subpart I - Classification of Pesticides. (P)

2. Rodent Bait Stations. Rodent bait shall be placed outside and contained in a covered, tamper-resistant bait station. (P)

3. Tracking Powders, Pest Control and Monitoring.

(i) Except as specified in subpart (ii) of this part, a tracking powder pesticide shall not be used in a food establishment. (P)

(ii) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

(g) Medicines.

1. Restriction and Storage.

(i) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment. (Pf)

(ii) Medicines that are in a food establishment for the employees' use shall be labeled as specified under 0080-04-09-.07(1)(a) and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles. (P)

2. Refrigerated Medicines, Storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(i) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; (P) and

(ii) Located so they are inaccessible to children. (P)

(h) First aid supplies that are in a food establishment for the employees' use shall be:

1. Labeled as specified under 0080-04-09-.07(1)(a); (Pf) and

2. Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles. (P)

(i) Other Personal Care Items. Except as specified under 0080-04-09-.07(2)(g)2 and 0080-04-09-.07(2)(h), employees shall store their personal care items in facilities as specified under 0080-04-09-.06(3)(e)2.

(3) Stock and Retail Sale.

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(a) Separating the poisonous or toxic materials by spacing or partitioning; (P) and

(b) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. (P)

Authority: T.C.A. § 53-8-204.

0080-04-09-.08 Compliance and Enforcement

(1) Applicability.

(a) Public Health Protection. In enforcing the provisions of this chapter, the commissioner shall assess existing facilities or equipment that were in use before the effective date of this chapter based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

2. Whether food-contact surfaces comply with 0080-04-09-.04(1)(a);

3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 0080-04-09-.04(3)(a)1; and

4. The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under 0080-04-09-.08(3)(i)6.

(b) Preventing Health Hazards, Provision for Conditions Not Addressed.

1. If necessary to protect against public health hazards or nuisances, the commissioner may impose specific requirements in addition to the requirements contained in this chapter that are authorized by law.

2. The commissioner shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the commissioner's file for the food establishment.

(c) Variances.

1. Modifications and Waivers. The commissioner may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the commissioner a health hazard or nuisance will not result from the variance. If a variance is granted, the commissioner shall retain the information specified under part 2 of this subparagraph in its records for the food establishment. Variance requests shall be submitted to a committee including a food scientist and representatives from industry and state and local public health agencies appointed by the department.

2. Documentation of Proposed Variance and Justification. Before a variance from a requirement of this chapter is approved, the information that shall be provided by the person requesting the variance and retained in the commissioner's file on the food establishment includes:

(i) A statement of the proposed variance of the chapter requirement citing relevant chapter section numbers;

(ii) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant chapter sections will be alternatively addressed by the proposal; and

(iii) A HACCP plan if required as specified under 0080-04-09-.08(2)(c) that includes the information specified under 0080-04-09-.08(2)(d) as it is relevant to the variance requested.

3. Conformance with Approved Procedures. If the commissioner grants a variance as specified in 0080-04-09-.08(1)(c), or a HACCP plan is otherwise required as specified under 0080-04-09-.08(2)(c), the permit holder shall:

(i) Comply with the HACCP plans and procedures that are submitted as specified under 0080-04-09-.08(2)(d) and approved as a basis for the modification or waiver; (P) and

(ii) Maintain and provide to the commissioner, upon request, records specified under 0080-04-09-.08(2)(d)4 and 5 that demonstrate that the following are routinely

employed;

(I) Procedures for monitoring the critical control points,

(II) Monitoring of the critical control points,

(III) Verification of the effectiveness of the operation or process, and

(IV) Necessary corrective actions if there is failure at a critical control point.

(2) Plan Submission and Approval.

(a) When Plans Are Required. Plans drawn to scale for food establishments shall be submitted for review and approval to the department. A permit applicant or permit holder shall submit to the commissioner properly prepared plans and specifications for review and approval before:

1. The construction of a food establishment;

2. The conversion of an existing structure for use as a food establishment; or

3. The remodeling of a food establishment or a change of type of food establishment or food operation as specified under 0080-04-09-.08(3)(e)3 if the commissioner determines that plans and specifications are necessary to ensure compliance with this chapter.

(b) Contents of the Plans and Specifications. The plans and specifications for a food establishment, including a food establishment specified under 0080-04-09-.08(2)(c), shall include, as required by the commissioner based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with chapter provisions:

1. Intended menu and plans to be reviewed;

2. Anticipated volume of food to be stored, prepared, and sold or served;

3. Proposed layout, mechanical schematics, construction materials, and finish schedules;

4. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

5. Evidence that standard procedures that ensure compliance with the requirements of this chapter are developed or are being developed; and

6. Other information that may be required by the commissioner for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

(c) When a HACCP Plan is Required.

1. Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the commissioner for approval a properly prepared HACCP plan as specified under 0080-04-09-.08(2)(d) and the relevant provisions of this chapter if:

(i) Submission of a HACCP plan is required according to law;

(ii) A variance is required as specified under 0080-04-09-.03(4)(a)1(iv)(IV), 0080-04-09-.03(5)(b)1, or 0080-04-09-.04(2)(d)8(ii);

(iii) The commissioner determines that a food preparation or processing method requires a variance based on a plan submittal specified under 0080-04-09-.08(2)(b), an inspectional finding, or a variance request.

2. A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under 0080-04-09-.03(5)(b)2.

(d) Contents of a HACCP Plan. For a food establishment that is required under 0080-04-09-.08(2)(c) to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of time/temperature control for safety foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the commissioner;

2. A flow diagram by specific or category type identifying critical control points and providing information on the following:

(i) Ingredients, materials, and equipment used in the preparation of that food, and

(ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

3. Food employee and supervisory training plan that addresses the food safety issues of concern;

4. A statement of standard operating procedures for the plan under consideration including clearly identifying:

(i) Each critical control point,

(ii) The critical limits for each critical control point,

(iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,

(iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,

(v) Action to be taken by the person in charge if the critical limits for each critical control point are not met, and

(vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

5. Additional scientific data or other information, as required by the commissioner, supporting the determination that food safety is not compromised by the proposal.

(e) Preoperational Inspections. The commissioner may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under 0080-04-09-.08(2)(b)5, and is in compliance with law and this chapter.

(3) Permit to Operate.

(a) Prerequisite for Operation. A person shall not operate a food establishment without a valid permit to operate issued by the commissioner.

(b) Submission 30 Calendar Days Before Proposed Opening. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility.

(c) Form of Submission. A person desiring to operate a food establishment shall submit to the commissioner a written application for a permit on a form provided by the commissioner.

(d) To qualify for a permit, an applicant shall:

1. Be an owner of the food establishment or an officer of the legal ownership;

2. Comply with the requirements of this chapter;

3. As specified under 0080-04-09-.08(4)(b)1, agree to allow access to the food establishment and to provide required information; and

4. Pay the applicable permit fees at the time the application is submitted.

(e) Contents of the Application. The application shall include:

1. The name, birth date, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

3. A statement specifying whether the food establishment:

(i) Is mobile or stationary and temporary or permanent, and

(ii) Is an operation that includes one or more of the following:

(I) Prepares, offers for sale, or serves time/temperature control for safety food:

I. Only to order upon a consumer's request,

II. In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or

III. Using time as the public health control as specified under 0080-04-09-.03(5)(a)9,

(II) Prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,

(III) Prepares food as specified under item 3(ii)(II) of this subparagraph for delivery to and consumption at a location off the premises of the food establishment where it is prepared,

(IV) Prepares food as specified under item 3(ii)(II) of this subparagraph for service to a highly susceptible population,

(V) Prepares only food that is not time/temperature control of safety food, or

(VI) Does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;

4. The name, title, address, and telephone number of the person directly responsible for the food establishment;

5. The names, titles, and addresses of:

(i) The persons comprising the legal ownership as specified under part 2 of this subparagraph including the owners and officers, and

(ii) The local resident agent if one is required based on the type of legal ownership;

6. A statement signed by the applicant that attests to the accuracy of the information provided in the application.

7. Other information required by the commissioner.

(f) New, Converted, or Remodeled Establishments. For food establishments that are required to submit plans as specified under 0080-04-09-.08(2)(a), the commissioner shall issue a permit to the applicant after:

1. A properly completed application is submitted;

2. The required fee is submitted;

3. The required plans, specifications, and information are reviewed and approved; and

4. A preoperational inspection as specified in 0080-04-09-.08(2)(e) shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter.

(g) Existing Establishments and Change of Ownership. As applicable, the commissioner may issue a permit to a new owner of an existing food establishment after an application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this chapter.

(h) Denial of Application for Permit, Notice. If an application for a permit to operate is denied, the commissioner shall provide the applicant with a notice that includes:

1. The specific reasons and chapter citations for the permit denial;

2. The actions, if any, that the applicant must take to qualify for a permit; and

3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

(i) Responsibilities of the Permit Holder. Upon acceptance of the permit issued by the commissioner, the permit holder in order to retain the permit shall:

1. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 0080-04-09-.08(1)(c)3, and approved plans as specified under 0080-04-09-.08(2)(b);

2. If a food establishment is required under 0080-04-09-.08(2)(c) to operate under a HACCP plan, comply with the plan as specified under 0080-04-09-.08(1)(c)3;

3. Immediately contact the commissioner to report an illness of a food employee or conditional employee as specified under 0080-04-09-.02(2)(a)2;

4. Immediately discontinue operations and notify the commissioner if an imminent health hazard may exist as specified under 0080-04-09-.08(4)(d)1;

5. Allow representatives of the commissioner access to the food establishment as specified under 0080-04-09-.08(4)(b)1;

6. Replace existing facilities and equipment specified in 0080-04-09-.08(1)(a) with facilities and equipment that comply with this chapter if:

(i) The commissioner directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,

(ii) The commissioner directs the replacement of the facilities and equipment because of a change of ownership, or

(iii) The facilities and equipment are replaced in the normal course of operation;

7. Comply with directives of the commissioner including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the commissioner in regard to the permit holder's food establishment or in response to community emergencies;

8. Accept notices issued and served by the commissioner according to law; and

9. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the commissioner, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(j) A permit shall not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under 0080-04-09-.08(3)(e)3 and the change in operation is not approved.

(4) Inspection and Correction of Violations.

(a) Frequency.

1. Establishing Inspection Interval. Except as specified in parts 2 and 3 of this subparagraph, the commissioner may inspect a food establishment at least once every six months.

2. The commissioner may increase the interval between inspections beyond six months if:

(i) The food establishment is fully operating under an approved and validated HACCP plan as specified under 0080-04-09-.08(2)(d) and 0080-04-09-.08(1)(c) 3(i) and (ii);

(ii) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every six months the establishment is contacted by telephone or other means by the commissioner to ensure that the establishment manager and the nature of food operation are not changed, or

(iii) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

3. The commissioner may periodically inspect throughout its permit period a temporary food

establishment that prepares, sells, or services unpackaged time/temperature control for safety food and that:

(i) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

(ii) Has inexperienced food employees.

4. Performance and Risk-Based. Within the parameters specified in subparagraph (a) of this paragraph, the commissioner shall prioritize and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

(i) Past performance, for nonconformance with this chapter or HACCP plan requirements that are priority items or priority foundation items;

(ii) Past performance, for numerous or repeat violations of this chapter or HACCP plan requirements that are core items;

(iii) Past performance, for complaints investigated and found to be valid;

(iv) The hazards associated with the particular foods that are prepared, stored, or served;

(v) The type of operation including the methods and extent of food storage, preparation, and service;

(vi) The number of people served; and

(vii) Whether the population served is a highly susceptible population.

(b) Access.

1. Allowed at Reasonable Times after Due Notice. After the commissioner presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the commissioner to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the commissioner is entitled according to law, during the food establishment's hours of operation and other reasonable times.

2. Refusal, Notification of Right to Access, and Final Request for Access. If a person denies access to the commissioner, the commissioner shall inform the person that:

(i) The permit holder shall allow access to the commissioner as specified under 0080-04-09-.08(4)(b)1;

(ii) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under 0080-04-09-.08(3)(i)5;

(iii) If access is denied, an administrative warrant may be obtained according to law; and

(iv) A final request for access will be made.

3. Refusal, Reporting. If after the commissioner presents credentials and provides notice as specified under 0080-04-09-.08(4)(c)1, explains the authority upon which access is

requested, and makes a final request for access as specified in 0080-04-09-.08(4)(b)2, the person in charge continues to refuse access, the commissioner shall provide details of the denial of access on an inspection report form.

(c) Report of Findings.

1. Documenting Information and Observations. The commissioner shall document on an inspection report form:

(i) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 0080-04-09-.08(3)(e)3, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

(ii) Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:

(I) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter as specified under 0080-04-09-.02(1)(b),

(II) Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under 0080-04-09-.02(2)(a)2 and 4,

(III) Nonconformance with priority items or priority foundation items of this chapter,

(IV) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the commissioner as specified under 0080-04-09-.08(1)(c)3,

(V) Failure of the person in charge to provide records required by the commissioner for determining conformance with a HACCP plan as specified under 0080-04-09-.08(2)(d)4(vi), and

(VI) Nonconformance with critical limits of a HACCP plan.

2. Specifying Time Frame for Corrections. The commissioner shall specify on the inspection report form the time frame for correction of the violations as specified under 0080-04-09-.08(4)(d) and 0080-04-09-.08(4)(e)1.

3. Issuing Report and Obtaining Acknowledgment of Receipt. At the conclusion of the inspection and according to law, the commissioner shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

4. Refusal to Sign Acknowledgment. The commissioner shall:

(i) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in 0080-04-09-.08(4)(c)3 that:

(I) An acknowledgment of receipt is not an agreement with findings,

(II) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and

(III) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the commissioner's historical record for the food establishment; and

(ii) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

(d) Imminent Health Hazard.

1. Ceasing Operations and Reporting.

(i) Except as specified in subpart (ii) of this part, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

(ii) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

2. Resumption of Operations. If operations are discontinued as specified under part (d)1 of this paragraph or otherwise according to law, the permit holder shall obtain approval from the commissioner before resuming operations.

(e) Violation of Priority Item or Priority Foundation Item.

1. Timely Correction.

(i) Except as specified in subpart (ii) of this part, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

(ii) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the commissioner may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the permit holder to correct violations of a priority item or priority foundation item or HACCP plan deviations.

2. Verification and Documentation of Correction.

(i) After observing at the time of inspection a correction of a violation of a priority item or priority foundation item or a HACCP plan deviation, the commissioner shall enter the violation and information about the corrective action on the inspection report.

(ii) As specified under 0080-04-09-.08(4)(e)1(ii), after receiving notification that the permit holder has corrected a violation of a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the commissioner may verify correction of the violation.

(f) Core Violation.

1. Except as specified in part 2 of this subparagraph, the permit holder shall correct core items by a date and time agreed to or specified by the commissioner but no later than 90 calendar days after the inspection.

2. The commissioner may approve a compliance schedule that extends beyond the time limits specified under part 1 of this subparagraph if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

Authority: T.C.A. § 53-8-204.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/20/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/04/14

Rulemaking Hearing(s) Conducted on: (add more dates). 10/28/14

Date: March 20, 2015

Signature: Julius T. Johnson

Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 20, 2015

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/11/2017

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

3/25/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Board of Pharmacy
SUBJECT:	Pharmacy: Introductory Rules and Rules for Manufacturers and Wholesalers/Distributors. Licensure Fees
STATUTORY AUTHORITY:	Tennesee Code Annotated, Section 63-1-132
EFFECTIVE DATES:	June 22, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule Chapter 1140-01: adds definitions of "outsourcing facility" and "oxygen supplier" and includes those terms in Rule Chapter 1140-09. Rules 1140-01-.08 [Application for Pharmacy Practice Site, Manufacturer, and Wholesaler/Distributor Licenses] and 1140-01-.09 [Renewal of Licenses]: adds terms "outsourcing facility" and "oxygen supplier." Rule 1140-01-.04: increases the current required number of hours in internships from one thousand five hundred (1,500) to one thousand seven hundred (1,700). Rule 1140-01-.04: deletes subparagraph (4)(c). Rule 1140-01-.10 [Fees]: new paragraph (7) will allow the Board to post a free electronic copy of the Pharmacy Drug Laws on the Board's website and amend paragraph. Rule 1140-01-.10 [Fees]: new paragraph (10) will allow the Board to charge the same fee for all replacement licenses, registrations, or modifiers granted by the Board. Rule 1140-01-.14 [Standards for Manufacturers and Wholesalers/Distributors]: will require outsourcing facilities and oxygen facilities to meet the standards of Rule Chapter 1140-09 before being granted a new license in the event of a change in location or ownership.

Rule 1140-09-.01: adds a licensure requirement for outsourcing facilities and oxygen suppliers in the State.

Rule 1140-09-.02: to detail the minimum information required from such oxygen suppliers and outsourcing facilities by amending paragraphs (1), (2) and (3). These two new licensure types will also be added in Rules 1140-09-.03, 1140-09-.04, 1140-09-.05 and 1140-09-.06.

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 Board received one comment from Brenda Warren, DPh.

Dr. Warren asked whether rule changes requiring the provision of a state inspection forum prior to licensure would prevent some entities which are located overseas or only hold licenses from the FDA from getting a Tennessee license.

Responding for the Board, Mr. Cange indicated that the federal law would control in those instances, and that a licensee who could only provide an FDA inspection report would satisfy the requirement (and thus would be eligible for licensure).

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.)

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

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

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

These proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

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

These proposed rule amendments do not establish flexible compliance and/or reporting requirements for small businesses.

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

The proposed rule amendments do not contain a schedule or deadline for compliance. The proposed rules are more a matter of internal housekeeping; affected entities are already in compliance with the substantive requirements of the law (which are not changed by the proposed rule amendment), so there is no need to provide a timeline for them to come into compliance.

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

These proposed rule amendments do not consolidate or simplify compliance or reporting requirements for small businesses.

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

These proposed rule amendments do not establish performance standards for small business as opposed to design or operation standards required for the proposed rules.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Pharmacy

Rulemaking hearing date: September 10, 2014

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   Pharmacies, Pharmacists, Outsourcing Facilities, and Oxygen Suppliers will be subject to these proposed rule amendments. Any costs associated with these rule amendments should be minimal as the amendments will only add licensure categories for Outsourcing Facilities and Oxygen Suppliers. Pharmacy students and schools are affected by the internship hour change.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   These rule amendments should not affect reporting, recordkeeping or other administrative costs.

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

   These rule amendments should have a minimal effect on small businesses. The new licensure categories do not carry any additional regulatory requirements, nor do they raise fees for affected businesses. However, the proposed rules will help to clarify the legal responsibilities of small businesses, as well as help streamline state administrative and enforcement efforts. Consumers will benefit from the addition of these licensure categories as the rules will now provide improved oversight over these industries. Pharmacy schools and students will benefit from the internship hour change, which will make it easier for students to satisfy the internship requirement through school-sponsored programs.

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

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

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

   Federal: Pharmaceutical outsourcing facilities as well as oxygen suppliers are currently regulated by Food and Drug Administration.

   State: Many other states have, or are in the process of developing, new licensure categories for outsourcing facilities as well as separate licenses for oxygen suppliers.

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

   These rule amendments do not provide for exemptions of small businesses from all or any part of the requirements contain in the proposed rule.

Impact on Local Governments

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

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

(6)

Department of State
Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 03-15-15
Rule ID(s): 5891-5892
File Date: 3/24/15
Effective Date: 6/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Pharmacy
Division:	
Contact Person:	Stefan Cange
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Stefan.Cange@tn.gov

Revision Type (check all that apply):

X 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**
1140-01	Introductory Rules
Rule Number	**Rule Title**
1140-01-.01	Definitions
1140-01-.04	Pharmacy Internship
1140-01-.08	Application for Pharmacy Practice Site, Manufacturer and Wholesaler/Distributor Licenses
1140-01-.10	Fees
1140-01-.14	Standards for Manufacturers and Wholesalers/Distributors

Chapter Number	Chapter Title
1140-09	Manufacturers and Wholesalers/Distributors
Rule Number	**Rule Title**
1140-09-.01	Manufacturer and Wholesaler/Distributor Licensing
1140-09-.02	Minimum Information Required
1140-09-.03	Minimum Qualifications
1140-09-.04	Personnel
1140-09-.05	Minimum Requirements for General Operation
1140-09-.06	Minimum Requirements for Sterile Product Operation

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-01
INTRODUCTORY RULES

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1140-01-.01 DEFINITIONS.

(1) "ACPE" means the Accreditation Council for Pharmaceutical Education.

(2) "Alternate or alternative infusion pharmacy practice site" means a pharmacy practice site where parenteral, enteral or respiratory therapies, and ancillary supplies, medications and equipment are provided to patients in a non-institutional setting.

(3) "Accreditation Council for Pharmacy Education (ACPE)" means the national organization for accreditation of professional degree programs in pharmacy and for accreditation of providers of continuing pharmacy education.

(4) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(5) "Blood fraction/component" means that part of blood separated by physical or mechanical means.

(6) "Centralized Prescription Processing" is the filling or refilling of a lawful prescription order written by the patient's authorized prescriber by one (1) pharmacy licensed by the State of Tennessee at the request of another pharmacy licensed by the State of Tennessee for the delivery of the prescription drugs to the patient or patient's agent.

(7) "Certified pharmacy technician" means an individual who is certified by a national or state agency that offers a certification program that is recognized by the board.

(8) "Commercially available" means any marketed FDA-approved drug or biologic product not currently listed on any official shortage list recognized by the Board of Pharmacy.

(9) "Component" means any active ingredient, or any added substance, inactive ingredient, excipient or pharmaceutic ingredient, intended for use in the compounding of a drug product, including those that may not appear on the product label.

(Rule 1140-01-.01, continued)

(10) "Consultant pharmacist" means a pharmacist retained on a routine basis to consult with organizations, institutional facilities or patients in areas that pertain to the practice of pharmacy.

(11) "Contact hour" means any hour of completed continuing pharmaceutical education programming which is:

(a) accredited by ACPE (including, but not limited to, live programs, independent study courses, home correspondence courses, and audio or video cassettes); or

(b) approved by the board (including, but not limited to, attendance at state, district, or local pharmacy association meetings).

(12) "Continuing education unit" means ten (10) hours of participation in an ACPE approved or board-approved continuing pharmaceutical education program under responsible sponsorship, capable direction, and qualified instruction.

(13) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the prescription drug.

(14) "Electronic medical or prescription order" means a medical or prescription order which is transmitted by computer technology other than by electronic image transmission.

(15) "Facsimile (FAX) medical or prescription order" means a medical or prescription order which is transmitted by an electronic image transmission.

(16) "Foreign pharmacy graduate" means a person whose undergraduate pharmacy degree was conferred by any college or school of pharmacy not accredited by the ACPE but which is listed in the World Health Organization World Directory of Colleges and Schools of Pharmacy, or otherwise approved by the Foreign Pharmacy Graduate Examination Committee (FPGEC) certification program as established by the National Association of Boards of Pharmacy.

(17) "Hazardous product" means any substance that may be cytotoxic, genotoxic, oncogenic, mutagenic, teratogenic, or otherwise pose a potential health hazard.

(18) "Institutional facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain health care services, and where patients spend a majority of their time within the facility, including but not limited to a(n):

(a) adult care facility;
(b) assisted living facility;
(c) correctional facility;
(d) developmental disability center;
(e) hospital;
(f) inpatient psychiatric center;
(g) intermediate care facility for the mentally retarded;
(h) mental health facility;
(i) nursing facility;
(j) personal care home;
(k) rehabilitation center;
(l) residential drug or alcohol treatment center;
(m) rest home;
(n) retirement center;
(o) sub-acute care facility; and

(Rule 1140-01-.01, continued)

(p) university health center.

(19) "Institutional pharmacy practice site" means a pharmacy practice site serving patients within an institutional facility.

(20) "Medication order" means a prescription order for any prescription drug or device or related material issued by an authorized prescriber to authorized healthcare personnel in an institutional facility or institutional pharmacy practice site.

(21) "National Association of Boards of Pharmacy (NABP)" means the professional organization that represents the individual state boards of pharmacy.

(22) "Nuclear pharmacy practice site" means a pharmacy practice site providing radiopharmaceutical services.

(23) "Outsourcing facility" means a facility engaged in the compounding of sterile drugs which has elected to register as an outsourcing facility with the U.S. Food and Drug Administration and which complies with all relevant federal laws and regulations.

(24) ""Oxygen supplier" means any person who sells, delivers, distributes or wholesales medical gases which require a prescription or medical order prior to administration, dispensing or delivery and which are considered legend drugs pursuant to the federal Food, Drug, and Cosmetic Act to any person residing in this state.

(25)~~(23)~~ "Patient counseling" means communication by the pharmacist of information to the patient or caregiver in order to improve therapeutic outcome.

(26)~~(24)~~ "Pharmaceutical care" is the responsible provision of drug therapy through, among other things, pharmacists identifying potential and actual drug-related problems and resolving and preventing drug-related problems, for the purpose of achieving definite outcomes that improve a patient's quality of life. The outcomes include but are not limited to cure of a disease, elimination or reduction of a patient's symptomatology, arresting or slowing of a disease process and the preventing of a disease or symptomatology.

(27)~~(25)~~ "Pharmacy internship" is a period of practical pharmacy experience under the direct supervision of a licensed pharmacist and pursuant to the rules of the board.

(28)~~(26)~~ "Pharmacy practice site" means any place within this state where prescription drugs or prescription devices are dispensed and where pharmaceutical care is provided, and any place outside of the state where prescription drugs or prescription devices are dispensed and pharmaceutical care is provided to persons residing in this state.

(29)~~(27)~~ "Preceptor" means an individual who is currently licensed as a pharmacist and who meets the qualifications of a preceptor under the rules of the board and participates in the education of pharmacy interns.

(30)~~(28)~~ "Prescription department" means the area of a pharmacy practice site in which prescription drugs and devices and related materials are stocked and medical and prescription orders are compounded and dispensed.

(31)~~(29)~~ "Quality assurance" means a system for identifying problems in patient care that are resolved via administrative, clinical, or educational actions to ensure that final products and outcomes meet applicable specifications.

(32)~~(30)~~ "Radiopharmaceutical service" means, but is not limited to:

(Rule 1140-01-.01, continued)

(a) the compounding, dispensing, labeling, and delivering of radiopharmaceuticals;

(b) the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews;

(c) the proper and safe storage and distribution of radiopharmaceuticals;

(d) the maintenance of radiopharmaceutical quality assurance;

(e) the responsibility for advising, where necessary or where regulated, of the diagnostic and therapeutic value, hazards, and use of radiopharmaceuticals; and

(f) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a nuclear pharmacy practice site.

(33)~~(31)~~ "Reciprocity" means to issue a license to an applicant who furnishes satisfactory proof of licensing by examination in another state or territory pursuant to the rules of the board.

(34)~~(32)~~ "Shall" means that compliance is mandatory.

(35)~~(33)~~ "Sterile product" means any dosage form, drug product, or biological product devoid from all living microorganisms, including but not limited to bacteria and fungus.

(36)~~(34)~~ "Sterile manufacturing" means the production, propagation, processing, pooling, or repackaging of sterile products for wholesale or any other form of distribution, not pursuant to a prescription or medical order.

(37)~~(35)~~ "Third party pharmacy program" means any system of providing for the reimbursement of medical or prescription orders and/or pharmaceutical care services under a contractual arrangement or agreement between a provider of such services and the third party program administrator who is not the consumer of those services.

(38)~~(36)~~ "Third party pharmacy program administrator" means, but is not limited to, insurance companies, managed care organizations, health maintenance organizations, preferred provider organizations, pharmacy benefit managers, and pharmacy services administrative organizations.

(39)~~(37)~~ "Unit dose packaging" means that packaging which is designed to hold a quantity of a drug product intended for administration as a single dose.

(40)~~(38)~~ "USP" means the United States Pharmacopeia.

(41)~~(39)~~ "USP standards" means any applicable standard or standards published in the most current version of United States Pharmacopeia National Formulary guidelines, to the extent that such guidelines do not conflict with state law, rules, or Board Policy Statements and as those guidelines may, from time to time, be amended.

Authority: *T.C.A. §§ 63-10-101, 63-10-102, 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-304(b)(1), 63-10-404(5), (6), (14), (22), (26), (28), and (29), 63-10-504(b)(1), and Chapter 966 of the Public Acts of 2008 §1.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009. Amendment filed December 23, 2009; effective March 23, 2010. Emergency rule filed January 31, 2014; effective through*

(Rule 1140-01-.01, continued)
July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendment filed July 11, 2014; effective October 9, 2014.

1140-01-.02 VIOLATIONS CONSTITUTE UNPROFESSIONAL CONDUCT.

(1) Any person who violates any rule of the board may be deemed guilty of dishonorable, immoral, unethical or unprofessional conduct within the meaning of *T.C.A. § 63-10-305(6).*

Authority: *T.C.A. §§ 63-10-301, 63-10-304 and 63-10-305.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed August 14, 1974; effective September 13, 1974. Repeal filed January 11, 1977; effective February 10, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed January 19, 1988; effective April 27, 1988. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Repeal and new rule filed July 11, 2014; effective October 9, 2014.*

1140-01-.03 APPLICATION FOR A PHARMACIST LICENSE.

(1) An applicant for a license to engage in the practice of pharmacy shall submit the following to the Board office at time of application:

(a) A completed application on a form approved by the Board;

(b) Application and registration fees established in rule 1140-01-.10; and

(c) The result of a criminal background check, which the applicant shall pay for and cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials.

(d) Any application submitted which lacks required information or reflects a failure to meet any of the requirements for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from date of written notification.

(2) For the purpose of *T.C.A. § 63-10-506(d),* a "recognized" college or school of pharmacy is a college or school of pharmacy which meets the minimum standards of the ACPE and appears in the ACPE "Annual Directory of Accredited Professional Programs of Colleges and Schools of Pharmacy."

(3) No applicant shall be eligible for a license if the applicant has engaged in conduct or suffers a condition which would constitute grounds for revocation or suspension of a license under *T.C.A. § 63-10-505*, unless the applicant can show cause why a license should be issued.

(4) No license shall be issued to a reciprocal applicant from a state which denies reciprocal privileges to a pharmacist currently licensed and in good standing in Tennessee.

(5) It shall be unlawful for any person to procure or attempt to procure a license or certificate of registration for such person or for any other person by making any false representations.

(6) An applicant initially licensed in another state and who wishes to obtain a Tennessee license may, in the discretion of the board, transfer to Tennessee the applicant's score on NAPLEX taken in another state. Provided, however, if the applicant has been licensed for twelve (12) or more months in another state, then the applicant shall apply for a license in Tennessee by reciprocity. No license shall be issued to a score transfer applicant from a state which denies

score transfer privileges to a pharmacist currently licensed and in good standing in Tennessee.

Authority: *T.C.A. §§ 63-10-101, 63-10-102(a), 63-1-116, 63-10-202, 63-10-304, 63-10-306, 63-10-404(2), (13), (17), and (26), 63-10-404(2), (13), (17), and (26), 63-10-504(b)(1), 63-10-506, and 63-10-508.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed December 17, 1984; effective March 16, 1985. Amendment filed October 30, 1991; effective December 14, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed January 4, 2012; effective April 3, 2012.*

1140-01-.04 PHARMACY INTERNSHIP.

~~(1) An applicant for an initial pharmacist license by examination must show, on affidavit forms prescribed by the board, that the applicant has acquired a minimum of one thousand five hundred (1,500) hours of pharmacy internship (practical pharmacy experience) under the instruction of a pharmacist in good standing, subject to all of the following conditions.~~

(1) An applicant for an initial pharmacist license by examination must show, on affidavit forms prescribed by the board, that the applicant has acquired a minimum of one thousand seven hundred (1,700) hours of pharmacy internship (practical pharmacy experience) under the instruction of a pharmacist in good standing, subject to all of the following conditions.

~~(a) The one thousand five hundred (1,500) hours must be acquired after enrollment in a recognized college or school of pharmacy; one thousand one hundred (1,100) of these hours may be acquired in pharmacy programs or demonstration projects structured by the college or school of pharmacy.~~

(a) The one thousand seven hundred (1,700) hours must be acquired after enrollment in a recognized college or school of pharmacy; one thousand seven hundred (1,700) of these hours must be acquired in pharmacy programs or demonstration projects structured by the college or school of pharmacy.

~~(b) Pharmacy internship may be acquired in another state, provided that the preceptor's qualifications are certified by the appropriate authorities of such state.~~

(b) Pharmacy internship may be acquired in another state, provided that the preceptor's qualifications are certified by the appropriate authorities of such state.

~~(c) Four hundred (400) of these hours may be acquired in non-traditional pharmacy internship programs which have received prior approval of the board.~~

(c) Foreign pharmacy graduates shall complete five hundred (500) hours of pharmacy internship in Tennessee within a period of six (6) consecutive months.

~~(d) Foreign pharmacy graduates shall complete five hundred (500) hours of pharmacy internship in Tennessee within a period of six (6) consecutive months.~~

Authority: *T.C.A. §§ 63-10-101, 63-10-102, 63-10-202, 63-10-404(29), and 63-10-504(b)(1).* ***Administrative History:*** *Original rule filed June 7, 1974; effective July 7, 1974. Amendment filed September 23, 1975; effective October 23, 1975. Amendment filed January 11, 1977; effective February 10, 1977. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed December 17, 1984; effective March 16, 1985. Amendment filed January 19, 1988; effective April 27, 1988. Repeal and new rule filed Mary 11, 1998; effective July 25, 1998.*

1140-01-.05 LICENSING EXAMINATIONS.

(1) An applicant for an initial license to engage in the practice of pharmacy in the State of Tennessee shall take the National Association of Boards of Pharmacy (NABP) Multistate Pharmacy Jurisprudence Examination (MPJE®) and the NABP North American Pharmacy Licensing Examination (NAPLEX®), which shall be administered on the dates scheduled by the NABP. An applicant shall also meet the minimum acceptable passing scores on the NAPLEX® and MPJE® as established and nationally accepted.

(2) An applicant to obtain a pharmacy license by reciprocity shall successfully complete the MPJE®.

(3) In addition to completing the requirements in paragraph (1) of this rule, a pharmacy foreign graduate shall successfully complete the foreign pharmacy equivalency examination, the Test of Spoken English (TSE®) examination and any other requirements established by the NABP.

(4) Any applicant who fails either the NAPLEX® or MPJE® may retake the examinations at any of the next examination dates scheduled by the NABP. If an applicant fails the NAPLEX® or MPJE® three (3) consecutive times, then the Board may require that applicant to take review courses prior to any following reexamination.

Authority: *T.C.A. §§ 63-10-304 and 63-10-306.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009.*

1140-01-.06 SUMMARY SUSPENSION OF LICENSE.

Pursuant to *T.C.A. § 4-5-320*, if the board finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.

Authority: *T.C.A. §§ 4-5-320, 63-10-101, 63-10-102, 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-505.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed November 15, 1989; effective December 30, 1989. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-01-.07 INACTIVE LICENSES AND LICENSE REINSTATEMENT.

(1) A pharmacist may apply for an inactive license by:

(a) Completing the biennial license renewal application form; and

(b) Paying the biennial renewal fee for an inactive license.

(2) A pharmacist maintaining an active license to practice pharmacy in another state or jurisdiction is ineligible for inactive license status in Tennessee.

(3) A pharmacist seeking active status for an inactive, delinquent, suspended or revoked license must fulfill the following minimum requirements.

(a) If the license has been inactive, delinquent, suspended or revoked for less than one (1) year, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

2. Satisfy all past due continuing pharmaceutical education as required by the board; and

3. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked.

(b) If the license has been inactive, delinquent, suspended or revoked from one (1) year to not more than five (5) consecutive years, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

(Rule 1140-01-.07, continued)

2. Satisfy all past due continuing pharmaceutical education as required by the board;

3. Successfully complete the jurisprudence examination;

4. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked; and

5. Complete a period of pharmacy internship in Tennessee as follows.

(i) If the license has been inactive, delinquent, suspended or revoked from one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days.

(ii) If the license has been inactive, delinquent, suspended or revoked for more than three (3) consecutive years but not more than five (5) consecutive years, three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

(c) If the license has been inactive, delinquent, suspended or revoked for more than five (5) consecutive years, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

2. Satisfy all past due continuing pharmaceutical education as required by the board;

3. Successfully complete the NAPLEX and jurisprudence examinations;

4. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked; and

5. Complete a period of pharmacy internship of three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

(d) Fulfill any other requirements which may be contained in any order of the board suspending or revoking the applicant's license.

(e) The board shall consider a written notice requesting reinstatement of an inactive, delinquent, suspended or revoked license within ninety (90) days of the notice being received by the director.

(f) The board shall consider a waiver upon request.

Authority: *T.C.A. §§ 63-10-101, 63-10-102, 63-10-210, 63-10-404(17), and 63-10-504(b)(1).* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed June 7, 1974; effective July 7, 1974. Amendment filed September 23, 1975; effective October 23, 1975. Amendment filed January 11, 1977; effective February 10, 1977. Amendment filed April 11, 1979; effective July 30, 1979. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-01-.08 ~~APPLICATION FOR PHARMACY PRACTICE SITE, MANUFACTURER AND WHOLESALER/DISTRIBUTOR LICENSES.~~

Application for Pharmacy Practice Site, Manufacturer, Outsourcing Facility, Oxygen Supplier and Wholesaler/Distributor Licenses.

~~(1) Application for a license to operate as a pharmacy practice site, manufacturer or wholesaler/distributor within the state of Tennessee shall be submitted to the office of the board at least thirty (30) days prior to the scheduled opening date. No pharmacy practice site, manufacturer or wholesaler/distributor may open within the state of Tennessee until a license has been obtained; and such license will not be issued until an inspection by an authorized representative of the board has been made.~~

(1) Application for a license to operate as a pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor within the state of Tennessee shall be submitted to the office of the board at least thirty (30) days prior to the scheduled opening date. No pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor may open within the state of Tennessee until a license has been obtained; and such license will not be issued until an inspection by an authorized representative of the board has been made.

~~(2) An application for an existing pharmacy practice site, manufacturer or wholesaler/distributor physically located within the state of Tennessee must be filed when the pharmacy practice site, manufacturer or wholesaler/distributor changes name, location or ownership.~~

2) An application for an existing pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor physically located within the state of Tennessee must be filed when the pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor changes name, location or ownership.

(a) Transactions constituting a change of ownership include, but are not limited to, the following:

1. A sole proprietor becomes a member of a partnership or corporation, which succeeds him as the new operator;

2. A partnership dissolves;

3. One partnership is replaced by another through the removal, addition or substitution of a partner;

4. Two (2) or more corporations merge and the originally-licensed corporation does not survive; and

5. Transfers between levels of government.

(b) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives; and

3. Corporate stock transfers or sales, even when a controlling interest.

(Rule 1140-01-.08, continued)

~~(3) No out-of-state pharmacy practice site, manufacturer or wholesaler/distributor shall conduct business in the state of Tennessee until such pharmacy practice site, manufacturer or wholesaler/distributor obtains the required license from the board. In order to obtain a license for a pharmacy practice site, manufacturer or wholesaler/distributor physically located out-of-state the following standards must be met.~~

(3) No out-of-state pharmacy practice site, manufacturer outsourcing facility, oxygen supplier or wholesaler/distributor shall conduct business in the state of Tennessee until such pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor obtains the required license from the board. In order to obtain a license for a pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor physically located out-of-state the following standards must be met.

(a) Pharmacy practice site.

1. Submit an application for a license, which shall include the address of the pharmacy practice site, name of owner if a sole proprietorship, names of partners if a partnership or names and titles of all officers if a corporation and names of all pharmacists who practice at the site, together with the appropriate application fee. The director shall be notified in writing within thirty (30) days of any change in the information contained on the original application for a license, including names of pharmacists practicing at the site.

2. Comply with all statutorily authorized directions and requests for information from the board.

3. Maintain at all times a current permit, license or registration to conduct the pharmacy practice site in compliance with the laws of the state in which the site is physically located.

4. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located. Thereafter, the pharmacy practice site shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the site is physically located.

5. Maintain records of prescription orders dispensed to persons residing in Tennessee.

6. All records of prescription orders prepared and dispensed to persons residing in Tennessee shall be readily retrievable from other records.

7. During regular hours of operation, but not less than six (6) days per week nor for a minimum of forty (40) hours per week provide access to a pharmacist by a toll-free telephone service. A toll-free number shall be placed on the label affixed to the dispensing container for each prescription dispensed to a person residing in Tennessee.

8. Designate a pharmacist in charge who shall be responsible for compliance with the provisions in this section, and who shall hold a current Tennessee pharmacist license.

(Rule 1140-01-.08, continued)

9. All out-of-state pharmacy practice sites shall comply with the requirements for patient counseling, patient profiling, drug regimen review and pharmaceutical care as set forth at 1140-03-.01.

~~(b) Manufacturer or wholesaler/distributor.~~

(b) Manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor.

~~1. Submit an application for a license, which shall include the address of the manufacturer or wholesaler/distributor, name of owner if a sole proprietorship, names of partners if a partnership or names and titles of all officers if a corporation, together with the appropriate application fee. The director shall be notified in writing within thirty (30) days of any change in the information contained on the original application for a license.~~

1. Submit an application for a license, which shall include the address of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, name of owner if a sole proprietorship, names of partners if a partnership or names and titles of all officers if a corporation, together with the appropriate application fee. The director shall be notified in writing within thirty (30) days of any change in the information contained on the original application for a license.

~~2. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the manufacturer or wholesaler/distributor is physically located. Thereafter, the manufacturer or wholesaler/distributor shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the manufacturer or wholesaler/distributor is physically located.~~

2. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located. Thereafter, the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located. Inspection reports which are more than one (1) year old at the time of submission shall not satisfy the requirements of this part.

3. Comply with the requirements contained in Chapter 1140-09 of the rules of the Board of Pharmacy.

~~(4) Representatives of a manufacturer or wholesaler/distributor conducting business in the state of Tennessee and who possesses and distributes controlled substances shall obtain a controlled substance registration from the Board of Pharmacy.~~

(4) Representatives of a manufacturer, outsourcing facility or wholesaler/distributor conducting business in the state of Tennessee and who possesses and distributes controlled substances shall obtain a controlled substance registration from the Board of Pharmacy.

~~(5) A manufacturer conducting business in the state of Tennessee and who manufactures, prepares, propagates, repackages, or processes sterile drug products or biological products using aseptic processing must register and possess a modifier as a sterile manufacturer with the Board of Pharmacy in accordance with this chapter. This section shall not apply to wholesalers/distributors of sterile products.~~

(Rule 1140-01-.08, continued)

(5) Any entity licensed as or applying for licensure as manufacturer or outsourcing facility conducting business in the state of Tennessee and who manufactures, prepares, propagates, repackages, or processes sterile drug products or biological products using aseptic processing must register and possess a modifier as a sterile manufacturer with the Board of Pharmacy in accordance with this chapter. This section shall not apply to wholesalers/distributors of sterile products.

(6) It shall be unlawful for any person to procure or attempt to procure a license or certificate of registration for such person or for any other person by making any false representations.

(7) In determining whether to grant a license under this rule, the board shall require from the applicant proof satisfactory to the board that the:

(a) Applicant is of good moral character, or, if the applicant is a partnership or corporation, that the managing officers are of good moral character; and

(b) That the applicant is equipped as to land, buildings and equipment necessary to conduct the business for which the application has been submitted.

Authority: *T.C.A. §§ 53-11-301, 53-11-302, 53-14-104, 53-14-106, 53-14-107, 56-1-302(b)(1)(2), 63-10-101, 63-10-102(a), 63-10-203, 63-10-204, 63-10-210, 63-10-301, 63-10-304, 63-10-306, 63-10-404(18), (28), and (37), 63-10-504(b)(1), § 63-10-504(b)(2), and 63-10-508.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed September 30, 1985; effective October 30, 1985. Amendment filed January 19, 1988; effective April 27, 1988. Amendment filed August 25, 1989; effective October 9, 1989. Amendment filed October 30, 1991; effective December 14, 1991. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendments filed July 11, 2014; effective October 9, 2014.*

1140-01-.09 RENEWAL OF LICENSES.

(1) All licenses and certificates of registration granted by the board shall be for a two (2) year period beginning on the date the license is initially granted. All licenses and certificates of registration shall be renewed on or before the last day of the two (2) year license cycle.

(2) A pharmacist or pharmacy technician serving in the uniformed services of the United States shall not be required to pay license or registration renewal fees during the period of active duty and the pharmacist shall not be required to complete continuing pharmacy education requirements during the period of active duty.

Authority: *T.C.A. §§ 53-11-301, 53-11-302, 56-1-302(b)(1)(2), 63-10-102(a), 63-10-404(17), 63-10-504(1) and (2), 63-10-304(b)(1) and 63-10-508.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed April 12, 1990; effective July 29, 1990. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed December 23, 2009; effective March 23, 2010.*

1140-01-.10 FEES.

(1) An applicant for examination for a license as a pharmacist shall pay a fee of fifty dollars ($50.00) plus cost of the examination and materials.

(Rule 1140-01-.10, continued)

(2) An applicant for a reciprocal license or NAPLEX score transfer shall pay a fee of three hundred dollars ($300.00).

(3) Each person becoming licensed as a pharmacist shall pay a registration fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist who desires to continue in the practice of pharmacy shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist and who wishes to obtain an inactive license shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of sixty-three dollars ($63.00).

(4) Each person becoming registered as a pharmacy technician shall pay a registration fee of seventy-five dollars ($75.00). Each person who desires to continue to practice as a pharmacy technician shall biennially, on or before the last day of the month that the person's registration shall expire, pay a renewal fee of seventy-five dollars ($75.00).

(5) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any establishment or institution where prescription drugs and devices and related materials are kept for the purpose of the compounding and dispensing of medical and prescription orders shall pay a registration fee of three-hundred dollars ($300.00) biennially. Any new pharmacy practice site to be opened or established, or any change in location, name or ownership of any existing pharmacy practice site, shall before active operation obtain a license from the Board of Pharmacy and shall pay a fee of three-hundred dollars ($300.00)

~~(6) All manufacturers and wholesalers/distributors of prescription drugs and devices and related materials doing business in the state of Tennessee must be licensed by the Board of Pharmacy by paying a registration fee of five-hundred twenty-five dollars ($525.00), and thereafter a biennial renewal fee of five-hundred twenty-five dollars ($525.00)~~

(6) All manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors of prescription drugs and devices and related materials doing business in the state of Tennessee must be licensed by the Board of Pharmacy by paying a registration fee of five-hundred twenty-five dollars ($525.00), and thereafter a biennial renewal fee of five-hundred twenty-five dollars ($525.00).

~~(7) The fee for the Board of Pharmacy's publication of Pharmacy Drug Laws, Rules and Regulations shall be an amount which covers the cost of publication and shipping, as determined by the Board of Pharmacy.~~

(7) The fee for the Board of Pharmacy's publication of Pharmacy Drug Laws, Rules and Regulations shall be an amount which covers the cost of publication and shipping, as determined by the Board of Pharmacy. The Board may also publish Pharmacy Drug Laws, Rules and Regulations electronically, and may make an electronic publication freely available on the Board's website.

(8) The charge for a roster of Tennessee pharmacies, pharmacists and printing of mailing labels of Tennessee pharmacies and pharmacists shall be determined by the administration of the Department of Health.

(9) The fee for certification of license examination grades shall be twenty five dollars ($25.00).

~~(10) The fee for a duplicate or revised pharmacist license wall certificate shall be twenty five dollars ($25.00).~~

(Rule 1140-01-.10, continued)

(10) The fee for any duplicate or revised license, registration, modifier or license wall certificate shall be twenty five dollars ($25.00).

(11) If any person fails to renew a license, such license may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(12) If any person fails to renew a license or registration certificate, such license or registration certificate may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(13) A penalty of fifty dollars ($50.00) may, in the discretion of the board, attach to each failure of a licensee or registration certificate holder to provide any required notice to the director as may be required by the rules of the board.

(14) Any licensee who wishes to modify the terms or conditions of a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall file those modifications with a non-refundable fee of five dollars ($5.00).

(15) Any person who holds a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall pay a renewal fee of one-hundred dollars ($100.00) biennially from the date of issuance.

(16) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any other establishment licensed pursuant to this chapter, where sterile products are compounded, manufactured, prepared, propagated, repackaged, processed, stored, or distributed shall pay a registration fee of two-hundred and fifty dollars ($250.00), and thereafter a biennial renewal fee of two-hundred and fifty dollars ($250.00).

Authority: *T.C.A. §§ 4-5-202, 63-10-102(a), 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-308, 63-10-404(17), 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-508.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed June 7, 1974; effective July 7, 1974. Amendment filed December 15, 1977; effective January 16, 1978. Amendment filed September 26, 1978; effective December 29, 1978. Repeal and new rule file February 7, 1983; effective March 9, 1983. Amendment filed May 23, 1986; effective August 12, 1986. Amendment filed January 26, 1987; effective April 29, 1987. Amendment filed October 1, 1987; effective January 27, 1988. Amendment filed November 18, 1989; effective February 28, 1989. Amendment filed October 18, 1990; effective January 29, 1991. Amendment filed May 3, 1991; effective August 28, 1991. Amendment filed December 22, 1992; effective March 31, 1993. Amendment filed June 25, 1993; effective September 28, 1993. Amendment filed October 19, 1996; effective February 28, 1996. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendments filed July 11, 2014; effective October 9, 2014.*

1140-01-.11 CONTROLLED SUBSTANCE REGISTRATION.

No licensee may obtain, possess, administer, dispense, distribute, or manufacture any controlled substance in this state, and no representative of a manufacturer or wholesaler/distributor may distribute

(Rule 1140-01-.12, continued)
any controlled substance in this state, without obtaining a controlled substance registration from the board. Application for such registration shall be submitted on a form prescribed by the board, and shall be accompanied by a fee of forty dollars ($40.00) and thereafter a biennial renewal fee of forty dollars ($40.00).

Authority: *T.C.A. §§ 53-10-303, 63-10-102, 63-10-102(a), 63-10-404, 63-10-404(6), 63-10-504, 63-10-504(b)(1) and (2), and 63-10-508.* ***Administrative History:*** *Original rule filed October 30, 1991; effective December 14, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-01-.12 STERILE PRODUCT REGISTRATION.

(1) No licensee may compound, manufacture, prepare, propagate, or process any sterile product to be dispensed, sold, traded, or otherwise distributed in or from this state without first obtaining a sterile compounding modifier registration from the Board of Pharmacy.

(2) A registration modifier to compound and dispense sterile products into or from this state may be suspended by the Board of Pharmacy, upon information that the registrant has:

(a) Knowingly furnished false or fraudulent material information in any application filed before the Board of Pharmacy; or

(b) Been convicted of a felony under any state or federal law relating to drugs or to the practice of pharmacy; or

(c) Had any of its licenses, permits, or registrations granted by the Food and Drug Administration (FDA), the Drug Enforcement Administration (DEA), the Department of Health and Human Services (DHHS), or any other federal agency or subdivision thereof, suspended, revoked, or voluntarily surrendered; or

(d) Been enjoined from operation by the court of any state or a federal court; or

(e) Been identified by the Commissioner of Health or the Commissioner's designee, the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), or an investigator of the Board of Pharmacy as a source of adulterated, misbranded, or otherwise unsafe sterile products which have been, or pose an imminent risk of being dispensed, sold, traded, or otherwise distributed.

(3) An order of suspension issued by the Board of Pharmacy may contain additional directives or requirements necessary to protect public health, safety and welfare, including but not limited to:

(a) The quarantine or disposal of any sterile product compounded, manufactured, prepared, propagated or processed at the facility.

(b) The initiation of a recall of any sterile product compounded, manufactured, prepared, propagated or processed at the facility where such products or any label, container, packaging, or dosage form associated with such products may be adulterated, misbranded, contaminated, or otherwise unsafe.

(c) An order of suspension issued by the Board of Pharmacy may contain exceptions or allowances necessary to protect individual patients or the public health.

(4) Any order of suspension issued by the Board of Pharmacy pursuant to this chapter shall follow the procedures required by the Uniform Administrative Procedures Act, including those procedures required by T.C.A. § 4-5-320(d) where appropriate.

(Rule 1140-01-.12, continued)

Authority: *T.C.A. §§ 63-10-301, 63-10-304, 63-10-305, and 63-10-306.* ***Administrative History:*** *Original rule filed July 11, 2014; effective October 9, 2014.*

1140-01-.13 STANDARDS FOR PHARMACIES AND PRESCRIPTION DEPARTMENT SECURITY.

A license to operate a new or remodeled pharmacy practice site, or an existing pharmacy practice site which changes location or ownership, will not be issued unless the pharmacy practice site meets the following standards.

(1) The pharmacy practice site and equipment therein shall be maintained in a clean, sanitary, orderly and well-lighted condition, and all persons working in the pharmacy practice site shall be required to keep themselves and their apparel in a clean and sanitary condition.

(2) All new or relocated pharmacies opening after July 1, 1998 shall provide a consultation area which offers sufficient privacy to the patient before a license will be issued. All existing pharmacies shall be in compliance with this requirement on or before January 1, 2000.

(3) The prescription department at the pharmacy practice site shall meet the following standards.

(a) The department shall have necessary counters and storage space.

(b) The department shall have a representative stock of prescription drugs and devices and related materials sufficient to compound and dispense medical and prescription orders as indicated by experience.

(c) The department shall have the apparatus and equipment needed to compound and dispense medical and prescription orders properly.

(d) The department shall occupy a space of not less than one hundred eighty (180) square feet.

(e) The department shall have hot and cold running water and immediate area refrigeration.

(f) The department shall have a physical barrier sufficient to protect against unauthorized entry and pilferage of prescription drugs and devices and related materials.

(g) Keys or other access devices to the physical barriers shall be subject to the following standards.

1. Only pharmacists practicing at the pharmacy and pharmacists authorized by the pharmacist in charge shall be in possession of any keys or other access devices.

2. The pharmacist in charge shall place a key or other access device in a sealed envelope bearing the signature of the pharmacist in charge affixed across the seal and placed in a safe or vault in a secured place outside of the department. The key or access device may be used to allow emergency entrance to the department.

(h) Access to the department is restricted to pharmacists, pharmacy interns and pharmacy technicians who are practicing at the pharmacy. Other persons designated by the pharmacist in charge may be allowed access but only during hours that a pharmacist is on duty.

(Rule 1140-01-.13, continued)

(i) Notwithstanding any rule or regulation to the contrary, a pharmacy which was established before June 6, 1945, and which serves food, and which has continuously had a soda fountain, may allow a customer to go through the pharmacy area to the restroom, and not be required to have a gate or door to separate the pharmacy from the restroom or other parts of the establishment.

(4) All licenses and certificates of registration for a pharmacy practice site shall at all times be conspicuously displayed at the practice site.

(5) If a pharmacy practice site is located in a mercantile establishment (such as a discount store, grocery store, department store, or other similar establishment), then such pharmacy practice site shall be:

(a) open for business during the same hours as the mercantile establishment, unless the pharmacy practice site is capable of being closed-off by physical barrier from floor to ceiling; and

(b) under the supervision of a pharmacist at all times; except as provided in rule 1140-03-.07.

(6) The pharmacist shall not at any time be denied access to the prescription department of a pharmacy practice site located in a mercantile establishment; provided, however, that entry of the pharmacist at times when the pharmacy is closed to the public may be subject to reasonable and prudent conditions.

(7) A pharmacy practice site where prescription drugs and devices and related materials are received, stored, compounded and dispensed shall not be opened for business or any other reason unless a licensed pharmacist is present. Furthermore, no medical or prescription order shall be dispensed except during the presence and under the direct supervision of a pharmacist.

(8) Nothing in this rule applies to a pharmacy practice site or prescription department operating in an institutional facility.

(9) In cases of practical difficulty or undue hardship, the board may permit exceptions to the standards specified in this rule.

Authority: *T.C.A. §§ 63-10-404(28), 63-10-504(b)(1), and 63-10-504(b)(1) and (2).* ***Administrative History:*** *Original rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Rule filed July 11, 2014 and was previously numbered 1140-01-.12, but was changed effective October 10, 2014 with an addition of a new 1140-01-.12. Rule was renumbered 1140-01-.13.*

1140-01-.14 ~~STANDARDS FOR MANUFACTURERS AND WHOLESALERS/DISTRIBUTORS.~~ STANDARDS FOR MANUFACTURERS, OUTSOURCING FACILITIES, OXYGEN SUPPLIERS AND WHOLESALERS/DISTRIBUTORS.

~~No license to operate a new or remodeled manufacturer or wholesaler/distributor location within the state of Tennessee, or an existing manufacturer or wholesaler/distributor location which changes location or ownership, will be issued unless the manufacturer or wholesaler/distributor meets the standards set forth in Chapter 1140-09 of the rules of the Board of Pharmacy~~

No license to operate a new or remodeled manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor location within the state of Tennessee, or an existing manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor location which changes location or ownership, will be

(Rule 1140-01-.13, continued)
issued unless the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor meets the standards set forth in Chapter 1140-09 of the rules of the Board of Pharmacy.

Authority: *T.C.A. §§ 63-10-301, 63-10-304 and 63-10-306.* ***Administrative History:*** *Original rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. The rule reverted to its previous status. Rule previously was previously numbered 1140-01-.13, but was renumbered 1140-01-.14. with the addition of a new 1140-01-.12. Rule was filed July 11, 2014; effective October 9, 2014.*

1140-01-.15 PRESCRIPTION DRUGS DISPENSED BY HEALTH DEPARTMENTS.

For purposes of *T.C.A. § 63-10-405*, the following drugs are hereby approved as not subject to abuse:

(1) Tuberculosis Control Agents:

(a) Capreomycin Injection

(b) Cycloserine Capsules

(c) Ethambutol Tablets

(d) Ethionamide Tablets

(e) Isoniazid Tablets

(f) Para-Aminosalicyclate Tablets

(g) Pyrazinamide Tablets

(h) Rifampin Capsules

(i) Streptomycin Injection

(j) Tuberculin Skin Test (Mantoux only)

(k) Rifampin/Isoniazid

(l) Ofloxacin

(m) Rifampin-isoniazid-pyrazinamide

(2) Venereal Disease Control Agents:

(a) Ampicillin Capsules

(b) Doxycycline Capsules

(c) Erythromycin Tablets

(d) Penicillin

1. Benzathine Penicillin G Injection

2. Procaine Penicillin G Injection

(Rule 1140-01-.15, continued)

(e) Probenecid Tablets

(f) Spectinomycin Injection

(g) Tetracycline Capsules

(h) Ceftriaxone

(i) Ciprofloxacin

(j) Lidocaine Injection

(k) Azithromycin

(l) Acyclovir Tablets, Ointments

(m) Trichloroacetic Acid

(n) Salicylic Acid

(o) Podophyllin/Salicylic Acid

(p) Aldara (Imiquimod)

(3) Biologicals/Immunizations:

(a) Antiserums

(b) Antitoxins

(c) Immune Serum Globulin

(d) Toxoids

(e) Vaccines

(f) Antigens

(4) Reproductive Health Agents:

(a) Metronidazole Tablets

(b) Oral Contraceptives

(c) Podophyllin

(d) Prenatal Vitamins

(e) Triple Sulfa Vaginal Cream/Tabs

(f) Vaginal Antifungal Cream/Tabs

1. Clotrimazole

2. Miconazole

(Rule 1140-01-.15, continued)

3. Nystatin

4. Terconazole (Terazole)

(g) Amino-Cerv

(h) Nitrofurantoin

(i) Ibuprofen, 600 mg Tablets

(j) Metronidazole (vaginal jell)

(k) Fluconazole Tablets

(l) Clindamycin Vaginal Cream

(m) Premarin Tablets (for use in estrogen trials for the evaluation of atypical cells in certain inflammatory atrophic pap smears)

(n) Medroxyprogesterone Acetate Injectable (Depo Provera®)

(o) Norelgestromin/ethinyl estradiol transdermal system (Ortho Evra®)

(p) Etonogestrel/ethinyl estradiol vaginal ring (Nuvaring®)

(5) Child Health Agents:

(a) Fluoride Tablets and Drops

(b) Lindane Cream, Lotion, Shampoo

(c) Mebendazole Tablets

(d) Pyrantel Pamoate Liquid

(e) Sulfadiazine Tablets

(f) Trimethoprim and Sulfamethoxazole

(g) Permethrin

(h) Crotamiton

(i) Nystatin Oral Suspension

(j) Nystatin Triamcinolone Cream

(k) Ibuprofen, Suspension Liquid

(6) Emergency Agents:

(a) Aminophylline Injection

(b) Benztropine Injection

(Rule 1140-01-.15, continued)

(c) Diphenhydramine Injection

(d) Epinephrine Injection

(e) Glucagon Injection

(f) Hydralazine Injection

(g) Hydrocortisone Sodium Succinate

(h) Insulin, Regular

(i) Intravenous Fluids

(j) Oxygen

(k) Phenylephrine Injection

(l) Sodium Bicarbonate Injection

(m) Atropine Injection

(n) Nitroglycerin Sublingual Tablets

(o) Dexamethasone Injection

(p) Norepinephrine

(7) Antihypertensive Agents:

(a) Methyldopa

(b) Reserpine

(c) Hydrochlorothiazide

(d) Hydralazine

(e) Propranolol

(f) Potassium Supplements

(g) Nicotine Patches

Authority: *T.C.A. §§ 63-10-404(14), 63-10-205, 63-10-304, 63-10-304(b)(1), 63-10-405, 63-10-504(b), 63-10-504(b)(1), and 63-10-504(b)(2).* ***Administrative History:*** *Original rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Amendment filed November 24, 2008; effective February 7, 2009. Amendment filed December 23, 2009; effective March 23, 2010. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired. Rule reverted on July 31, 2014 to its previous status. Rule was previously numbered 1140-01-.14 but was renumbered 1140-01-.15 with the addituion of a new 1140-01-.12. Rule filed July 11, 2014; October 9, 2014.*

1140-01-.16 RESERVED.

Authority: *T.C.A. §§ 63-10-301, 63-10-304, 63-10-3-5, and 63-10-308.* ***Administrative History:*** *Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired. The rule reverted to reserved status on July 31, 2014. The rule reverted to its previous status. Rule was previously numbered 1140-01-.15, but renumbered 1140-01-.16 with the addition of a new 1140-01-.12. Rule filed July 11, 2014; effective October 9, 2014.*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-09
~~MANUFACTURERS AND WHOLESALERS/DISTRIBUTORS~~
Manufacturers, Outsourcing Facilities, Oxygen Suppliers and Wholesalers/Distributors

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1140-09-.01 ~~MANUFACTURER AND WHOLESALER/DISTRIBUTOR LICENSING.~~ Manufacturer, Outsourcing Facility, Oxygen Supplier and Wholesaler/Distributor Licensing.

~~(1) Every manufacturer or wholesaler/distributor, before engaging in the manufacture, sale or distribution of prescription drugs and prescription devices in this state, must be licensed by the Board in accordance with this chapter.~~

(1) Every manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, before engaging in the manufacture, sale or distribution of prescription drugs and prescription devices in this state, must be licensed by the Board in accordance with this chapter.

(2) An applicant with physical facilities in this state must obtain and display prominently a separate license for each principal place of business where the applicant manufactures or distributes prescription drugs and prescription devices.

(3) The requirement of a license shall not apply to the following types of distributions:

(a) Intracompany sales;

(b) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(c) The sale, purchase or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(d) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control; for purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock, voting rights, by contract or otherwise;

(e) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons; for purpose of this subparagraph,

(Rule 1140-09-.01, continued)

"emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy practice site to alleviate a temporary shortage;

(f) The sale, purchase, or trade of a prescription drug, an offer to sell, purchase or trade a prescription drug, or the dispensing of a prescription drug pursuant to a medical or prescription order;

(g) The distribution of prescription drug samples by manufacturers' representatives; or

(h) The sale, purchase, or trade of blood and blood components intended for transfusion.

(i) The sale, purchase, or trade of a prescription drug, or an offer to sell, purchase or trade of a prescription drug by a pharmacy practice site to another pharmacy practice site or to authorized prescribing practitioners, except that the total gross dollar volume of such transfers shall not exceed five percent (5%) of the total medical and prescription orders sales revenue of either the transferor or transferee pharmacy during any twelve (12) consecutive month period.

Authority: *T.C.A. § 63-10-204, 63-10-304, 63-10-305, 63-10-306, 63-10-404(2), (8), (14), (18), (37), 63-10-504(b)(1), and 63-10-506(f).* ***Administrative History:*** *Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-09-.02 MINIMUM INFORMATION REQUIRED.

~~(1) The board shall require the following minimum information from each manufacturer or wholesaler/distributor applying for a license or any renewal of such license.~~

~~(a) The name, full business address, and telephone number of the manufacturer or wholesaler/distributor;~~

~~(b) All trade or business names used by the manufacturer or wholesaler/distributor;~~

~~(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the manufacturer or wholesaler/distributor for storage, handling, and distribution;~~

~~(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and~~

~~(e) The name(s) of the owner and/or operator of the manufacturer or wholesaler/distributor, including:~~

~~1. If a person, the name of the person;~~

~~2. If a partnership, the name of each partner, and the name of the partnership;~~

~~3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;~~

~~4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity~~

~~5. DEA registration number if applicable; and~~

(Rule 1140-09-.02, continued)

~~6. The results of a criminal background check for the owner or manager of the facility seeking licensure, submitted directly to the Board of Pharmacy by the vendor identified in the Board of Pharmacy's licensure application materials.~~

~~(2) Applicants seeking to register as manufacturers shall provide the following materials to the Board of Pharmacy:~~

~~(a) Proof of registration with the Food and Drug Administration as a manufacturer and the most current inspection by that agency, or correspondence or other written proof from the Food and Drug Administration which states that registration with that agency is unnecessary;~~

~~(b) The name and contact information of the owner, the owner's agent, or another such individual employed at or contracted by the applicant that can be reached at any time by the Board of Pharmacy, the Department of Health or any agents thereof in the event of a potential or actual public health threat related to the sterility or potency of any drug or biologic product manufactured, wholesaled or distributed by the applicant.~~

~~(3) Applicants seeking to register as sterile manufacturers shall provide the following materials to the Board of Pharmacy:~~

~~(a) Upon request by the Board of Pharmacy or the executive director, a list of sterile products currently being manufactured, wholesaled and distributed;~~

~~(b) The name and contact information for any laboratory, corporation, or other organization that may perform sterility and potency testing, or similar procedures for the purposes of quality assurance on any drug or biologic product produced by the applicant;~~

~~(4) Changes in any information in paragraphs (1), (2), or (3) of this rule shall be submitted in writing to the Board of Pharmacy immediately.~~

(1) The board shall require the following minimum information from each manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor applying for a license or any renewal of such license:

(a) The name, full business address, and telephone number of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor;

(b) All trade or business names used by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor;

(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor for storage, handling, and distribution;

(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and

(e) The name(s) of the owner and/or operator of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, including:

1. If a person, the name of the person;

2. If a partnership, the name of each partner, and the name of the partnership;

3. If a corporation, the name and title of each corporate officer and director, the

(Rule 1140-09-.02, continued)

corporate names, and the name of the state of incorporation;

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

5. DEA registration number if applicable; and

6. The results of a criminal background check for the owner or manager of the facility seeking licensure, submitted directly to the Board of Pharmacy by the vendor identified in the Board of Pharmacy's licensure application materials.

(2) Applicants seeking to register as manufacturers or outsourcing facilities shall provide the following materials to the Board of Pharmacy:

(a) Proof of registration with the Food and Drug Administration as a manufacturer or outsourcing facility and the most current inspection by that agency, or correspondence or other written proof from the Food and Drug Administration which states that registration with that agency is unnecessary;

(b) The name and contact information of the owner, the owner's agent, or another such individual employed at or contracted by the applicant that can be reached at any time by the Board of Pharmacy, the Department of Health or any agents thereof in the event of a potential or actual public health threat related to the sterility or potency of any drug or biologic product manufactured, wholesaled or distributed by the applicant.

(3) Applicants seeking to obtain a sterile compounding modifier registration shall provide the following materials to the Board of Pharmacy:

(a) Upon request by the Board of Pharmacy or the executive director, a list of sterile products currently being manufactured, wholesaled and distributed;

(b) The name and contact information for any laboratory, corporation, or other organization that may perform sterility and potency testing, or similar procedures for the purposes of quality assurance on any drug or biologic product produced by the applicant;

(4) Changes in any information in paragraphs (1), (2), or (3) of this rule shall be submitted in writing to the Board of Pharmacy immediately.

Authority: *T.C.A. § 63-10-204, 63-10-304, 63-10-305, 63-10-306, 63-10-404 (2), (18), (37), 63-10-504(b)(1), and 63-10-506(f).* ***Administrative History:*** *Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendments filed July 11, 2014; effective October 9, 2014.*

1140-09-.03 MINIMUM QUALIFICATIONS.

~~(1) The board shall consider, at a minimum, the following factors in reviewing an application for a license as a manufacturer or wholesaler/distributor:~~

(1) The board shall consider, at a minimum, the following factors in reviewing an application for a license as a manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples or distribution of controlled substances;

(Rule 1140-09-.03, continued)

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the manufacturing or distribution of prescription drugs and prescription devices, including controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with manufacturing or distribution;

(e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances, prescription drugs and prescription devices;

(f) Compliance with licensing requirements under previously granted licenses, if any;

(g) Compliance with requirements to maintain and/or make available to the board or to federal, state, or local law enforcement officials those records required federal, state or local laws; and

(h) Any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(2) The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.

Authority: *T.C.A. § 63-10-404, 63-10-404 (2), (6), (8), (14), (18), (37), 63-10-504, and 63-10-504(b)(1).* ***Administrative History:*** *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1999, effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-09-.04 PERSONNEL.

~~The board shall require that personnel employed by a manufacturer or wholesaler/distributor have appropriate education and/or experience to assume positions of responsibility for compliance with board requirements.~~

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The board shall require that personnel employed by a manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor have appropriate education and/or experience to assume positions of responsibility for compliance with board requirements.

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Authority: *T.C.A. § 63-10-404, 63-10-404 (2), (18), (37), 63-10-504, and 63-10-504(b)(1).* ***Administrative History:*** *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-09-.05 MINIMUM REQUIREMENTS FOR GENERAL OPERATION.

~~The following shall be the minimum requirements for the storage and handling of prescription drugs and prescription devices and for the establishment and maintenance of prescription drug and prescription device distribution records by manufacturers and wholesalers/distributors:~~

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The following shall be the minimum requirements for the storage and handling of prescription drugs and prescription devices and for the establishment and maintenance of prescription drug and prescription device distribution records by manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors:

(Rule 1140-09-.05, continued)

(1) Facilities. All facilities at which prescription drugs and prescription devices are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(a) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(b) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(c) Have a quarantine area for storage of prescription drugs and prescription devices that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(d) Be maintained in a clean and orderly condition, and

(e) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Security.

(a) All facilities shall be secure from unauthorized entry.

1. Access from outside the premises shall be kept to a minimum and be well-controlled.

2. The outside perimeter of the premises shall be well-lighted.

3. Entry into areas where prescription drugs and prescription devices are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(3) Storage. All prescription drugs and prescription devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs and devices, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(a) If no storage requirements are established for a prescription drug or prescription device it may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that identity, strength, quality, and purity are not adversely affected.

(b) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs and prescription devices.

(c) The record keeping requirements in paragraph (6) of this section shall be followed for all prescription drugs and prescription devices.

(4) Examination of materials.

(Rule 1140-09-.05, continued)

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(b) Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(c) The record keeping requirements in paragraph (6) of this section shall be followed for all incoming and outgoing prescription drugs.

(5) Returned, damaged, and outdated prescription drugs and prescription devices.

(a) Prescription drugs and prescription devices that are outside, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and prescription devices until destroyed or returned.

(b) Any prescription drugs and prescription devices whose immediate or sealed outer or sealed secondary containers have been opened or used shall be quarantined and physically separated from other prescription drugs and prescription devices until either destroyed or returned.

~~(c) If the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, then the prescription drug or prescription device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the prescription drug or prescription device meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, the manufacturer or wholesaler/distributor shall consider, among other things, the conditions under which the prescription drug or prescription device has been held, stored or shipped before or during return and the condition of the prescription drug or device or related material and its container, carton, or labeling, as a result of storage or shipping.~~

(c) If the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, then the prescription drug or prescription device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the prescription drug or prescription device meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, the manufacturer, outsourcing facility , oxygen supplier or wholesaler/distributor shall consider, among other things, the conditions under which the prescription drug or prescription device has been held, stored or shipped before or during return and the condition of the prescription drug or device or related material and its container, carton, or labeling, as a result of storage or shipping.

(d) The record keeping requirements in paragraph (6) of this section shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and prescription devices.

(6) Record keeping.

~~(a) Manufacturers and wholesalers/distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition~~

(Rule 1140-09-.05, continued)

~~of prescription drugs and prescription devices. These records shall include the following information:~~

(a) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription devices. These records shall include the following information:

1. The source of the prescription drugs and prescription devices including the name and principal address of the seller or transferor, and the address of the location from which the prescription drugs and prescription devices were shipped;

2. The identity and quantity of the prescription drugs and prescription devices received and distributed or disposed of; and

3. The dates of receipt and distribution or other disposition of the prescription drugs and prescription devices.

(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the prescription drugs and prescription devices.

(c) Records described in this paragraph that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

~~(7) Written policies and procedures. Manufacturers and wholesalers/distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and prescription devices; including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Manufacturers and wholesalers/distributors shall include in written policies and procedures the following:~~

(7) Written policies and procedures. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and prescription devices; including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall include in written policies and procedures the following:

(a) A procedure whereby the older approved stock of a prescription drug or prescription device is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.

(b) A procedure to be followed for handling recalls and withdrawals of prescription drugs and prescription devices. Such procedures shall be adequate to respond to recalls and withdrawals due to:

1. Any action initiated at the request of the United States Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the board;

(Rule 1140-09-.05, continued)

~~2. Any voluntary action by the manufacturer or wholesaler/distributor to remove defective or potentially defective prescription drugs and prescription devices from the market; or~~

2. Any voluntary action by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor to remove defective or potentially defective prescription drugs and prescription devices from the market; or

3. Any action undertaken to promote public health and safety by replacing of an existing product with an improved product or new package design.

~~(c) A procedure to ensure that manufacturers and wholesalers/distributors prepare for, protect against, and respond to any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.~~

(c) A procedure to ensure that manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors prepare for, protect against, and respond to any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

~~(d) A procedure to ensure that any outdated prescription drugs and prescription devices shall be segregated from other prescription drugs and prescription devices and either returned to the manufacturer or wholesaler/distributor or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs and prescription devices. This documentation shall be maintained for two (2) years after disposition of the outdated prescription drugs and prescription devices.~~

(d) A procedure to ensure that any outdated prescription drugs and prescription devices shall be segregated from other prescription drugs and prescription devices and either returned to the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs and prescription devices. This documentation shall be maintained for two (2) years after disposition of the outdated prescription drugs and prescription devices.

~~(8) Responsible persons. Manufacturers and wholesalers/distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of distribution, storage, and handling, including a description of such persons' duties and a summary of such persons' qualifications.~~

(8) Responsible persons. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of distribution, storage, and handling, including a description of such persons' duties and a summary of such persons' qualifications.

~~(9) Compliance with federal, state, and local law. Manufacturers and wholesalers/distributors shall operate in compliance with applicable federal, state, and local laws and regulations.~~

(9) Compliance with federal, state, and local law. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

~~(a) Manufacturers and wholesalers/distributors shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect premises and~~

(Rule 1140-09-.05, continued)

~~delivery vehicles, and to audit records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.~~

(a) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect premises and delivery vehicles, and to audit records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

~~(b) Manufacturers and wholesalers/distributors that handle controlled substances shall register with the board and with the United States Drug Enforcement Administration (DEA) and shall comply with applicable state, local and DEA regulations.~~

(b) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors that handle controlled substances shall register with the board and with the United States Drug Enforcement Administration (DEA) and shall comply with applicable state, local and DEA regulations.

~~(10) Salvaging and reprocessing. Manufacturers and wholesalers/distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to salvaging or reprocessing of prescription drugs and prescription devices~~

(10) Salvaging and reprocessing. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall be subject to the provisions of any applicable federal, state, and local laws or regulations that relate to salvaging or reprocessing of prescription drugs and prescription devices.

Authority: *T.C.A. § 63-10-204, 63-10-304, 63-10-305, and 63-10-306, 63-10-404 (8), (18), (33), (37), and 63-10-504(b)(1).* ***Administrative History:*** *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-09-.06 MINIMUM REQUIREMENTS FOR STERILE PRODUCT OPERATION.

~~(1) Any manufacturer or wholesaler/distributor licensed pursuant to this chapter that also holds an active sterile compounding registration from the Board of Pharmacy and that holds a license or registration from the Federal Food and Drug Administration, shall comply with all applicable federal laws, regulations, and guidelines including, but not limited to:~~

~~(a) FDA Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs 21 CFR 210;~~

~~(b) FDA Current Good Manufacturing Practice for Finished Pharmaceuticals 21 CFR 211;~~

~~(c) DEA regulations relating to controlled substances 21 CFR 1300-99.~~

~~(2) Any manufacturer or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy and who does not hold a license or registration from the federal Food and Drug Administration shall comply with all applicable USP standards.~~

~~(3) Any manufacturer or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy shall comply with all other applicable Board of Pharmacy rules and all other applicable laws of this State.~~

(Rule 1140-09-.05, continued)

~~(4) The Board of Pharmacy may waive any applicable USP standards upon a showing by the applicant that good cause exists and that a waiver would better promote public health, safety, and welfare.~~

1140-09-.06 Minimum Requirements for Sterile Product Operation

(1) Any manufacturer, outsourcing facility, or wholesaler/distributor licensed pursuant to this chapter that also holds an active sterile compounding registration from the Board of Pharmacy and that holds a license or registration from the Federal Food and Drug Administration, shall comply with all applicable federal laws, regulations, and guidelines including, but not limited to:

(a) FDA Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs 21 CFR § 210;

(b) FDA Current Good Manufacturing Practice for Finished Pharmaceuticals 21 CFR § 211;

(c) DEA regulations relating to controlled substances 21 CFR §§1300-99.

(2) Any manufacturer, outsourcing facility or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy and who does not hold a license or registration from the federal Food and Drug Administration shall comply with all applicable USP standards.

(3) Any manufacturer, outsourcing facility or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy shall comply with all other applicable Board of Pharmacy rules and all other applicable laws of this State.

(4) The Board of Pharmacy may waive any applicable USP standards upon a showing by the applicant that good cause exists and that a waiver would better promote public health, safety, and welfare.

Authority: *T.C.A. §§ 63-10-404 and 63-10-504.* ***Administrative History:*** *Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to reserved status. Original rule filed July 11, 2014; effective October 9, 2014.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Debra Wilson				X	
Jason Kizer, D.Ph	X				
Nina Smothers, D.Ph.	X				
Joyce McDaniel				X	
Will Bunch, D.Ph.	X				
Kevin K. Eidson, Pharm. D.	X				
R. Michael Dickenson, D.Ph.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Pharmacy (board/commission/ other authority) on 09/10/2014 (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: *6/11/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/10/14 (mm/dd/yy)*

Date: 2/6/15

Signature:

Name of Officer: Stefan Cange

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 2-6-15

Notary Public Signature:

My commission expires on:

SUSANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 15, 2017
SUMNER COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/24/15

RDA 1693

Effective on: 6/22/15

Tre Hargett
Secretary of State

SECRETARY OF STATE
RECEIVED
2015 MAR 24 PM 4:13

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:** Health

DIVISION: Board of Dentistry

SUBJECT: Rules, Anesthesia and Sedation

STATUTORY AUTHORITY: Tennesseee Code Annotated, Section 63-1-132

EFFECTIVE DATES: June 22, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Rule 0460-02-.07(6)(a)2 is amended by deleting subpart (iii).

Rule 0460-02-.07(6)(b)1 (ix) is being amended to add the words "and sedation."

Rule 0460-02-.07 (6)(b)3 is being amended to change the word "indicated" to "recommended" when referring to a patient's need for consultation with their primary care physician before receiving sedation if they are deemed medically unstable or have a significant health disability.

Rule 0460-02-.07 (6)(b)6(iii) is being amended to include an automated external defibrillator be available at the site of anesthesia and sedation.

Rule 0460-02-.07(7)(a)1(i)(l) changes a reference from the 2000 ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry to the "most recent version."

Rule 0460-02-.07(7)(a)1(i)(V) is being deleted due to an unnecessary reference to a general anesthesia permit (which is already covered in earlier paragraphs).

Rule 0460-02-.07 (7)(b)3 is being amended to change the word "indicated" to "recommended" when referring to a patient's need for consultation with their primary care physician before receiving sedation if they are deemed medically unstable or have a significant health disability.

Rule 0460-02-.07 (7)(b)5(v) is being amended to only requiring monitoring of end tidal C02.

Rule 0460-02-.07 (7)(b)6(iv) is being amended to require that an automated external defibrillator to be available under emergency management.

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.

Dr. John Werther, a member of the Dental Board's Anesthesia Committee, proposed the following verbiage be added following the word C02 and before the semi-colon: "unless precluded or invalidated by the nature of the patient, procedure, or equipment."

He stated that this change would make the ruling verbatim consistent with the American Association of Oral and Maxillofacial Surgeons 2012 Parameters of Care.

The Board voted to accept this 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.

(If applicable, insert Regulatory Flexibility Addendum here)

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

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment reflects clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not create any compliance or reporting requirements for small businesses.

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

This rule amendment does not create any compliance or reporting requirements for small businesses.

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

This rule amendment does not create any compliance or reporting requirements for small businesses.

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

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

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

(Insert statement here.)

The proposed rule amendments should not have an impact on local governments as they only affect dentists who possess a conscious sedation permit or a deep sedation/general anesthesia permit.

(8)

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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 03-17-15
Rule ID(s): 5896
File Date: 3/24/15
Effective Date: 6/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Dentistry
Division:	
Contact Person:	Jennifer Putnam
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Jennifer.Putnam@tn.gov

Revision Type (check all that apply):

X 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**
0460-02	Rules Governing the Practice of Dentistry
Rule Number	**Rule Title**
0460-02-.07	Anesthesia and Sedation

0460-02-.07 ANESTHESIA AND SEDATION.

(1) Definitions

(a) Advanced Cardiac Life Support (ACLS). A certification that means a person has successfully completed an advanced cardiac life support course offered by a recognized accrediting organization.

(b) American Society of Anesthesiologists (ASA) Patient Physical Status Classification

1. ASA I - A normal healthy patient.

2. ASA II - A patient with mild systemic disease.

3. ASA III - A patient with severe systemic disease.

4. ASA IV - A patient with severe systemic disease that is a constant threat to life.

5. ASA V - A moribund patient who is not expected to survive without the operation.

6. ASA VI - A declared brain-dead patient whose organs are being removed for donor purposes.

7. E - Emergency operation of any variety (used to modify one of the above classifications, i.e., ASA III-E).

(c) Antianxiety premedication (anxiolysis). The prescription of pharmacologic substances for the relief of anxiety and apprehension.

(d) Certified Registered Nurse Anesthetist (CRNA). A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.

(e) Conscious sedation. A minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof.

(f) Deep sedation. An induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.

(g) Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa [i.e, oral, rectal, sublingual].

(h) General anesthesia. An induced state of unconsciousness accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.

(i) Health Care Provider Life Support. The skills necessary to administer cardiopulmonary resuscitation (CPR) for victims of all ages.

(Rule 0460-02-.07, continued)

(j) Hospital. A hospital licensed by the Department of Health's Division of Health Care Facilities.

(k) Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

(l) Nitrous oxide inhalation analgesia. The administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

(m) Pediatric Advanced Life Support (PALS). A certification that means a person has successfully completed an pediatric advanced life support course offered by a recognized accrediting organization.

(n) Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intransal (IN), submucosal (SM), subcutaneous (SC)].

(o) Physician. A person licensed to practice medicine and surgery pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9.

(2) Permits required.

(a) No permit is required for the administration of nitrous oxide inhalation analgesia; however, dentists must comply with the provisions of 0460-02-.07 (4).

(b) No permit is required for the use of antianxiety premedication (anxiolysis); however, dentists must comply with the provisions of 0460-02-.07 (5).

(c) Dentists must obtain a permit to administer conscious sedation. A conscious sedation permit may be limited or comprehensive.

1. A limited conscious sedation permit authorizes dentists to administer conscious sedation by the enteral and/or combination inhalation-enteral method.

2. A comprehensive conscious sedation permit authorizes a dentist to administer conscious sedation by the enteral, combination inhalation-enteral or parenteral method.

3. Children thirteen (13) and under

(i) Dentists who administer conscious sedation by any method to children thirteen (13) and under must have a comprehensive conscious sedation permit.

(ii) Agents used to produce conscious sedation/deep sedation/general anesthesia in children thirteen (13) years of age and under must be given under the direct supervision of the dentist.

4. Dentists issued limited or comprehensive conscious sedation permits must comply with rule 0460-02-.07 (6).

(Rule 0460-02-.07, continued)

(d) Dentists must obtain a permit to administer deep sedation/general anesthesia and comply with rule 0460-02-.07 (7).

(3) Determination of degree of sedation

(a) The degree of sedation or consciousness level of a patient is the determinant for the application of these rules, not the route of administration. Determining the degree of sedation or level of consciousness of a patient is based upon:

1. The type and dosage of medication that was administered or was proposed for administration to the patient;

2. The age, physical size and medical condition of the patient receiving the medication; and

3. The degree of sedation or level of consciousness that should reasonably be expected to result from that type and dosage of medication.

(b) In a proceeding of the board at which the board must determine the degree of sedation or level of consciousness of a patient, the board will base its findings on the provisions of subparagraph (a).

(4) Nitrous oxide inhalation analgesia.

(a) Nitrous oxide may be administered by a licensed dentist or a licensed and properly certified dental hygienist under the direct supervision of a licensed dentist. The administering or supervising dentist must be on the premises at all times that nitrous oxide is in use.

(b) An authorized person must constantly monitor each patient receiving nitrous oxide. In addition to dentists, any licensed dental hygienist or registered dental assistant who has complied with rules 0460-03-.06 or 0460-04-.05 is an authorized person and may monitor patients who are receiving nitrous oxide.

(c) Monitoring nitrous oxide. Monitoring patients receiving nitrous oxide inhalation analgesia as an adjunct to dental or to dental hygiene procedures consists of continuous direct clinical observation of the patient and begins after the dentist or dental hygienist has initiated the analgesia. The dentist must be notified of any change in the patient which might indicate an adverse effect on the patient. Those certified in nitrous oxide monitoring may terminate the administration of nitrous oxide inhalation analgesia.

(d) All equipment for the administration of nitrous oxide must be designed specifically to guarantee that an oxygen concentration of no less than thirty percent (30%) can be administered to the patient.

(e) All equipment for the administration of nitrous oxide must be equipped with a scavenger system.

(5) Antianxiety premedication (anxiolysis).

(a) The regulation and monitoring of this modality of treatment are the responsibility of the ordering dentist. The drugs used should carry a margin of safety wide enough to never render unintended loss of consciousness. If the administration is for antianxiety purposes, the appropriate initial dosing of a single enteral drug can be no more than the maximum recommended dose (MRD) of a drug that can be prescribed for non-

(Rule 0460-02-.07, continued)

monitored home use. The co-administration of nitrous oxide is allowed. If the MRD is exceeded then a limited conscious sedation permit is required.

(b) A dentist using antianxiety premedication must employ auxiliary personnel who are certified in Health Care Provider Life Support.

(c) All antianxiety premedications and all sedation techniques (except nitrous oxide and oxygen) used for children age thirteen (13) and under require a comprehensive conscious sedation permit.

(6) Conscious sedation.

(a) Dentists must obtain a permit from the Board of Dentistry to administer conscious sedation in the dental office. Conscious sedation permits are either limited or comprehensive.

1. To obtain a limited conscious sedation permit, a dentist must provide proof of current certification in ACLS (a pediatric dentist may substitute PALS), and must provide proof of one (1) of the following:

(i) Completion of an ADA accredited postdoctoral training program which affords comprehensive training necessary to administer and manage enteral and/or combination inhalation-enteral conscious sedation, or

(ii) Completion of a continuing education course which consists of a minimum of twenty four (24) hours of didactic instruction plus ten (10) clinically-oriented experiences which provide competency in enteral and/or combination inhalation-enteral conscious sedation.

2. To obtain a comprehensive conscious sedation permit, a dentist must provide proof of current certification in ACLS (a pediatric dentist may substitute PALS), and must provide proof of one (1) of the following:

(i) Completion of an ADA accredited postdoctoral training program which affords comprehensive training to administer and manage parenteral conscious sedation, or

(ii) Completion of a continuing education course consisting of a minimum of sixty (60) hours of didactic instruction plus the management of at least twenty (20) patients which provides competency in parenteral conscious sedation. The course content must be consistent with that described for an approved continuing education program in these techniques in the ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry, 2000 edition, or its successor publication~~, or~~.

~~(iii) Possess on the effective date of this regulation a current valid intravenous conscious sedation permit issued by the board. Such dentist will be issued a new comprehensive conscious sedation permit and must comply with the general rules set forth in this regulation.~~

3. Dentists who provide conscious sedation for children must provide evidence of adequate training in pediatric sedation techniques and in pediatric resuscitation including the recognition and management of pediatric airway and respiratory problems.

(Rule 0460-02-.07, continued)

4. A dentist who utilizes a Certified Registered Nurse Anesthetist (CRNA) to administer conscious sedation must have a valid comprehensive conscious sedation permit.

5. A dentist may utilize a physician (MD or DO), who is a member of the anesthesiology staff of an accredited hospital, or a permitted dentist to administer conscious sedation in that dentist's office. Such person must remain on the premises of the dental facility until all patients given conscious sedation meet discharge criteria. The office must comply with the general rules for conscious sedation, i.e. rule 0460-02-.07 (6) (b). A dentist utilizing such person and complying with these provisions does not require a conscious sedation permit.

(b) General rules for conscious sedation.

1. Physical facilities.

(i) The treatment room must be large enough to accommodate the patient adequately on a table or in a dental chair and to allow an operating team, consisting of at least two persons, to move freely about the patient.

(ii) The operating table or dental chair must allow the patient to be placed in a position such that the operating team can maintain the airway, allow the operating team to alter the patient's position quickly in an emergency, and provide a firm platform for the management of cardiopulmonary resuscitation.

(iii) The lighting system must be adequate to allow an evaluation of the patient's skin and mucosal color and provide adequate light for the procedure.

(iv) Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities.

(v) A system for delivering oxygen must have adequate full-face masks and appropriate connectors, and be capable of delivering oxygen to the patient under positive pressure.

(vi) A recovery area must be provided that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area may be the treatment room. A member of the staff must be able to observe the patient at all times during the recovery.

(vii) An alternate lighting system sufficiently intense to allow completion of any procedure and an alternate suction device that will function effectively must be available for emergency use at the time of a general power failure.

(viii) In offices where pediatric patients are treated, appropriate sized equipment must be available.

(ix) Inspections of the anesthesia and sedation equipment shall be made each day the equipment is used and a log kept recording the inspection and its results.

2. Personnel.

(Rule 0460-02-.07, continued)

(i) During conscious sedation at least one (1) person, in addition to the operating dentist, must be present.

(ii) Members of the operating team must be trained for their duties according to protocol established by the dentist and must be currently certified in Health Care Provider Life Support.

(iii) All operatory room and/or recovery personnel who provide clinical care shall hold a current, appropriate Tennessee license/registration pursuant to Tennessee Code Annotated, Title 63.

(iv) Unlicensed/unregistered personnel may not be assigned duties or responsibilities that require professional licensure.

(v) Notwithstanding the provisions of part (iv), duties assigned to unlicensed/unregistered personnel shall be in accordance with their training, education, and experience and under the direct supervision of a licensed dentist.

3. Patient evaluation. Patients subjected to conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist is ~~indicated~~ recommended.

4. Dental records. The dental record must include:

(i) A medical history including current medications and drug allergies;

(ii) Informed consent for the type of anesthesia used;

(iii) Baseline vital signs including blood pressure and pulse. If determination of baseline vital signs is prevented by the patient's age, physical resistance or emotional condition, the reason(s) should be documented;

(iv) A time-oriented anesthesia record which includes the drugs and dosage administered;

(v) Documentation of complications or morbidity; and

(vi) Status of the patient on discharge.

5. Monitoring

(i) Direct clinical observation of the patient must be continuous;

(ii) Interval recording of blood pressure and pulse must occur;

(iii) Oxygen saturation must be evaluated continuously by a pulse oximeter;

(iv) The patient must be monitored during recovery by trained personnel until stable for discharge;

(Rule 0460-02-.07, continued)

(v) If monitoring procedures are prevented by the patient's age, physical resistance or emotional condition, the reason(s) should be documented; and

(vi) If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist must stop the dental procedure until the patient returns to the intended level of sedation.

6. Emergency management.

(i) Written protocols must be established by the dentist to manage emergencies related to conscious sedation including but not limited to laryngospasm, bronchospasm, emesis and aspiration, airway occlusion by foreign body, angina pectoris, myocardial infarction, hypertension, hypotension, allergic and toxic reactions, convulsions, hyperventilation and hypoventilation.

(ii) Training to familiarize the operating team with these protocols must be periodic and current. Regular staff education programs and training sessions shall be provided and documented which include sessions on emergencies, life safety, medical equipment, utility systems, infection control, and hazardous waste practices.

(iii) A cardiac defibrillator or automated external defibrillator must be available.

(iv) Equipment and drugs on a list available from the Board and currently indicated for the treatment of the above listed emergency conditions must be present and readily available for use. Emergency protocols must include training in the use of this equipment and these drugs.

7. Recovery and discharge.

(i) Patients must be monitored for adequacy of ventilation and circulation. The dental record must reflect that ventilation and circulation are stable and the patient is appropriately responsive prior to discharge.

(ii) The dental office must develop specific criteria for discharge parameters for conscious sedation for both adult and pediatric patients.

(iii) The dental record must reflect that appropriate discharge instructions were given, and that the patient was discharged into the care of a responsible person.

(7) Deep sedation/general anesthesia.

(a) Dentists must obtain a permit from the Board of Dentistry to administer deep sedation/general anesthesia in the dental office.

1. Obtaining the permit

(i) To obtain a deep sedation/general anesthesia permit, a dentist must provide proof of current certification in ACLS (a pediatric dentist may substitute PALS), and must provide certification of one (1) of the following:

(I) Successful completion of a minimum of one (1) year advanced training in anesthesiology and related academic subjects beyond the

(Rule 0460-02-.07, continued)

undergraduate dental school level in a training program as described in the most recent version of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry~~, 2000 edition, or its successor publication~~, or

(II) Proof of successful completion of a graduate program in oral and maxillofacial surgery which has been approved by the Commission on Accreditation of the American Dental Association; or

(III) Proof of successful completion of a residency program in general anesthesia of not less than one (1) calendar year that is approved by the Board of Directors of the American Dental Society of Anesthesiology for eligibility for the Fellowship in General Anesthesia or proof that the applicant is a Diplomate of the American Board of Dental Anesthesiology~~; or~~.

(IV) ~~Possess on the effective date of this regulation a current, valid general anesthesia permit issued by the board. Such dentists will be issued a new deep sedation/general anesthesia permit and must comply with the general rules set forth in this regulation.~~

(ii) Dentists who provide deep sedation/general anesthesia for children must provide evidence of adequate training in pediatric sedation techniques, in general anesthesia, and in pediatric resuscitation including the recognition and management of pediatric airway and respiratory problems.

2. A dentist may utilize a physician (MD or DO), who is a member of an anesthesiology staff of an accredited hospital, or another dentist who holds a deep sedation/general anesthesia permit to administer deep sedation or general anesthesia in that dentist's office. Such person must remain on the premises of the dental facility until all patients given deep sedation or general anesthesia meet discharge criteria. The office must comply with the general rules for deep sedation/general anesthesia, i.e. rule 0460-02-.07 (7) (b). A dentist utilizing such person and complying with these provisions does not require a deep sedation/general anesthesia permit.

3. A dentist who utilizes a Certified Registered Nurse Anesthetist (CRNA) to administer deep sedation/general anesthesia must have a valid deep sedation/general anesthesia permit.

4. A dentist who holds a deep sedation/general anesthesia permit may administer conscious sedation.

(b) General rules for deep sedation/general anesthesia.

1. Physical facilities.

(i) The treatment room must be large enough to accommodate the patient adequately on a table or in a dental chair and to allow an operating team, consisting of at least three (3) persons, to move freely about the patient.

(ii) The operating table or dental chair must allow the patient to be placed in a position such that the operating team can maintain the airway, allow the operating team to alter the patient's position quickly in an emergency, and provide a firm platform for the management of cardiopulmonary resuscitation.

(Rule 0460-02-.07, continued)

(iii) The lighting system must be adequate to allow an evaluation of the patient's skin and mucosal color and provide adequate light for the procedure.

(iv) Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities.

(v) A system for delivering oxygen must have adequate full-face masks and appropriate connectors, and be capable of delivering oxygen to the patient under positive pressure.

(vi) A recovery area must be provided that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area may be the treatment room. A member of the staff must be able to observe the patient at all times during the recovery.

(vii) An alternate lighting system sufficiently intense to allow completion of any procedure and an alternate suction device that will function effectively must be available for emergency use at the time of a general power failure.

(viii) In offices where pediatric patients are treated, appropriate sized equipment must be available.

(ix) Inspections of the deep sedation/general anesthesia equipment shall be made each day the equipment is used and a log kept recording the inspection and its results.

2. Personnel.

(i) During deep sedation/general anesthesia at least two (2) persons, in addition to the operating dentist, must be present.

(ii) Members of the operating team must be trained for their duties according to protocol established by the dentist and must be currently certified in Health Care Provider Life Support.

(iii) When the same individual administering the deep sedation/general anesthesia is performing the dental procedure, there must be a second (2nd) individual trained in patient monitoring.

(iv) All operatory room and/or recovery personnel who provide clinical care shall hold a current, appropriate Tennessee license/registration pursuant to Tennessee Code Annotated, Title 63.

(v) Unlicensed/unregistered personnel may not be assigned duties or responsibilities that require professional licensure.

(vi) Notwithstanding the provisions of subpart (v), duties assigned to unlicensed/unregistered personnel shall be in accordance with their training, education, and experience and under the direct supervision of a licensed dentist.

3. Patient evaluation. Patients subjected to deep sedation/general anesthesia must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current

medical history and medication use. However with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist is ~~indicated~~ recommended.

4. Dental records. The dental record must include:

   (i) A medical history including current medications and drug allergies;

   (ii) Informed consent for the type of anesthesia used;

   (iii) Baseline vital signs including blood pressure, pulse and temperature. If determination of baseline vital signs is prevented by the patient's age, physical resistance or emotional condition the reason(s) should be documented;

   (iv) A time-oriented anesthesia record which includes the drugs and dosage administered and an interval recording of blood pressure and pulse;

   (v) Documentation of complications or morbidity; and

   (vi) Status of the patient on discharge.

5. Monitoring.

   (i) Direct clinical observation of the patient must be continuous;

   (ii) Interval recording of blood pressure and pulse must occur;

   (iii) Oxygen saturation must be monitored continuously by pulse oximeter;

   (iv) Continuous EKG monitoring with electrocardioscope must occur;

   (v) Respirations must be monitored ~~for intubated patients~~ by ~~auscultation of breath sounds or~~ end tidal CO_2 unless precluded or invalidated by the nature of the patient, procedure, or equipment;

   (vi) If anesthetic agents implicated in the etiology of malignant hyperthermia are used, body temperature must continuously be monitored; and

   (vii) The patient must be monitored during recovery by trained personnel until stable for discharge.

6. Emergency management.

   (i) Written protocols must be established by the dentist to manage emergencies related to deep sedation/general anesthesia including but not limited to laryngospasm, bronchospasm, emesis and aspiration, airway occlusion by foreign body, angina pectoris, myocardial infarction, hypertension, hypotension, allergic and toxic reactions, convulsions, hyperventilation and hypoventilation.

   (ii) If anesthetic agents implicated in the etiology of malignant hyperthermia are used, protocols to treat the malignant hyperthermia must be established.

(Rule 0460-02-.07, continued)

(iii) Training to familiarize the operating team with these protocols must be periodic and current. Regular staff education programs and training sessions shall be provided and documented which include sessions on emergencies, life safety, medical equipment, utility systems, infection control, and hazardous waste practices.

(iv) A cardiac defibrillator or automated external defibrillator must be available.

(v) Equipment and drugs on a list available from the Board and currently indicated for the treatment of the above listed emergency conditions must be present and readily available for use. Emergency protocols must include training in the use of this equipment and these drugs.

7. Recovery and discharge.

(i) Patients must be monitored for adequacy of ventilation and circulation. The dental record must reflect that ventilation and circulation are stable and the patient is appropriately responsive prior to discharge.

(ii) The dental office must develop specific criteria for discharge parameters for deep sedation/general anesthesia for both adult and pediatric patients.

(iii) The dental record must reflect that appropriate discharge instructions were given, and that the patient was discharged into the care of a responsible adult.

(8) Continuing education. In order to maintain a limited or comprehensive conscious sedation or deep sedation/general anesthesia permit, a dentist must:

(a) Maintain current certification in ACLS (a pediatric dentist may substitute PALS); or

(b) Certify attendance every two (2) years at a board approved course comparable to ACLS or PALS and devoted specifically to the prevention and management of emergencies associated with conscious sedation or deep sedation/general anesthesia; and

(c) Obtain a minimum of four (4) hours of continuing education in the subject of anesthesia and/or sedation as part of the required forty (40) hours of continuing education for dental licensure. ACLS or PALS certification shall not be included as any part of the required four (4) hours.

(9) Reporting injury or mortality.

(a) A written report shall be submitted to the board by the dentist within thirty (30) days of any anesthesia-related incident resulting in patient injury or mortality, which occurred when the patient was under the care of the dentist and required hospitalization. In the event of patient mortality, concurrent with a sedation or anesthesia-related incident, this incident must be reported to the board within two (2) working days, to be followed by the written report within thirty (30) days.

(b) A written report shall include:

1. Description of dental procedure;

2. Description of preoperative physical condition of the patient;

3. List of the drugs and dosages administered;

(Rule 0460-02-.07, continued)

4. Detailed description of techniques utilized in administering the drugs;

5. Description of adverse occurrence to include:

(i) Detailed description of symptoms of any complications including, but not limited to, onset and type of symptoms in the patient;

(ii) Treatment instituted on patient; and

(iii) Response of the patient to treatment; and

6. Description of the patient's condition on termination of any procedure undertaken.

(10) Permit process (limited conscious sedation, comprehensive conscious sedation, deep sedation/general anesthesia).

(a) To obtain a limited or comprehensive conscious sedation permit or deep sedation/general anesthesia permit, a dentist must apply on an application form provided by the board and submit the appropriate fee as established by the board.

(b) The applicant must submit acceptable proof to the Board:

1. For a limited conscious sedation permit:

(i) That the educational requirements of 0460-02-.07 (6) (a) 1. are met; and

(ii) Compliance with general rules 0460-02-.07 (6) (b).

2. For a comprehensive conscious sedation permit:

(i) That the educational requirements of 0460-02-.07 (6) (a) 2. are met; and

(ii) Compliance with general rules 0460-02-.07 (6) (b).

3. For a deep sedation/general anesthesia permit:

(i) That the educational requirements of 0460-02-.07 (7) (a) have been met; and

(ii) Compliance with general rules 0460-02-.07 (7) (b).

(c) A permit must be renewed every two (2) years by payment of the appropriate renewal fee as established by the board and by certification of the continuing education requirement [0460-02-.07 (8)] and by certification of compliance with the general rules for conscious sedation [0460-02-.07 (6) (b)] or deep sedation/general anesthesia [0460-02-.07 (7) (b)].

(11) Anesthesia Consultants

(a) In addition to the Board Consultant and his/her duties, as provided in Rule 0460-01-.03, Anesthesia Consultants shall be appointed by the board to assist the board in the administration of this rule. All Anesthesia Consultants shall be licensed to practice dentistry in Tennessee and shall all hold current, valid comprehensive conscious sedation or deep sedation/general anesthesia permits.

(Rule 0460-02-.07, continued)

(b) The Anesthesia Consultants shall be:

1. A periodontist;

2. A pediatric dentist;

3. A general dentist; and

4. Two (2) oral and maxillofacial surgeons.

(c) The Anesthesia Consultants shall advise the Board of Dentistry regarding the continuing education courses, to be approved by the Board, to satisfy the requirements in subpart (6) (a) 1. (ii), item (6) (a) 2. (i) (II) and subparagraph (8) (b).

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-108, 63-5-112, 63-5-115, 63-5-117, 63-5-122, and 63-5-124.* ***Administrative History:*** *Original rule filed December 11, 1991; effective January 25, 1992. Amendment filed May 15, 1996; effective September 27, 1996. Amendment filed February 18, 2003; effective May 4, 2003. Amendment filed December 28, 2004; effective March 13, 2005. Amendment filed July 10, 2006; effective September 23, 2006. Amendment filed September 25, 2008; effective December 9, 2008. Amendments filed October 22, 2010; effective January 20, 2011.*

0460-02-.08 LICENSURE RENEWAL. All licensed dentists must renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

(1) Renewal application

(a) The due date for licensure renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:

1. A completed renewal application form.

2. The renewal and state regulatory fees as provided in Rule 0460-01-.02.

3. If licensed pursuant to rule 0460-02-.03, a letter of request accompanied by a letter of recommendation from the dean or director of the educational institution.

* 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)
Charles E. Holt, Jr.	X				
Nadim J. Jubran	X				
Mary R. Warner	X				
Ernest J. DeWald	X				
Katherine N. Hall	X				
Airica Brooke Puckett	X				
Mary Ellen Vaughn	X				
Stephen J. Maroda	X				
Randall P. Prince	X				
Dan T. Meadows	X				
Bettye Lynn Richert	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Dentistry (board/commission/ other authority) on 11/07/2014 (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: *11/07/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/08/15 (mm/dd/yy)*

Date: 1/12/15

Signature: Jennifer L. Putnam

Name of Officer: Jennifer Putnam

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 1-12-15

Notary Public Signature: Suzanne McCown C

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015

Date

Department of State Use Only

Filed with the Department of State on: 3/24/15

Effective on: 6/22/15

Tre Hargett
Secretary of State

SECRETARY OF STATE
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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Board of Alcohol and Drug Abuse Counselors
SUBJECT:	Rules: Licensure
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-1-132
EFFECTIVE DATES:	June 25, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The Board of Alcohol and Drug Abuse Counselors seeks to rewrite their rules regarding licensure and to implement a tiered licensure system, in keeping with national standards for Licensed Alcohol and Drug Abuse Counselors, and requiring more stringent application criteria. The following sections of the rules are to be amended in keeping with implementing such provisions: definitions, scope of practice, necessity of licensure, qualifications for licensure, licensure process, examination, supervision, and continuing education.

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.

Board of Alcohol and Drug Abuse Counselors
Hearing Date: January 17, 2014

Public Comments

Robert N. Vero, President of the Tennessee Association of Mental Health Organizations (TAMHO), sent a letter addressed to the Board, specifically to Sherry Butler, commending the work of the Board, but stating that the Association would be taking a neutral position regarding the proposed rule amendments. The letter goes on to request that the language in several provisions be reconsidered in light of expanding the scope of those allowed to practice alcohol and drug abuse counseling pursuant to the rules. TAMHO first addresses the grandfathering clause, requesting "consideration be given to amending the current language in accordance with academic credentials held upon final approval of the rules." Secondly, TAMHO focuses on Expansion of Clinical Supervision Eligibility stating, "[w]e respectfully request...language to include other licensed professionals with similar clinical experience, but who do not hold a LADAC, and [to] extend the privileges of the Clinical Supervision designation or purposes of licensing preparation. This could potentially resolve issues related to the lack of Qualified Clinical Supervisors and expand the growth of the LADAC." Lastly, TAMHO requests the Board to further amend [the] language regarding the Written Examination for Level II LADACs stating, "[w]e respectfully request consideration be given to amending this language to accept passage of either the NCAC II or MAC."

The Board did not address the first two concerns of TAMHO presented in this letter, The Board, however, did vote to include the MAC (Master of Addiction Counseling Examination) in rule 1200-30-01-.04 as well as other rules affected by this change.

Michael Reynolds spoke at the rulemaking hearing on behalf of the Tennessee Association of Mental Health Organizations (TAMHO). He applauded the commitment of the Board, but he also addressed concerns that the grandfather clause in the proposed rules would not require a bachelor's degree to become a Licensed Alcohol and Drug Abuse Counselor. He also requested the Board consider adding the Masters of Addiction Counseling Examination (MAC) as another Board-approved testing option for those applicants seeking licensure.

The Board did not comment on the first request, but the Board did vote to add the MAC examination. The grandfather clause cannot be amended to include those with a master's degree because such an amendment could potentially affect the livelihood of those currently in practice.

Kathryn Benson, also representing TAMHO, sought clarification as to whether Level II Licensed Alcohol and Drug Abuse Counselors must obtain alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor. Ms. Benson commended the Board for its work and supported prior comments. Ms. Benson voiced support for the tiered licensure system and opined that this was a necessary change.

The Board voted to accept this change.

Tammy Stone, an independent Qualified Licensed Alcohol and Drug Abuse Supervisor with Cumberland Heights, also challenged the "bachelor degree requirement" as being unnecessary due to the amount of skilled workers currently practicing without such a degree. She noted that it is more important for a counselor to have the right attitude, knowledge, and skills which are not necessarily developed by a higher degree. Ms. Stone indicated that she currently has over fifty (50) current alcohol and drug abuse counselor candidates under her supervision and is concerned that these rules will prevent them from advancing in the field. She did, however, commend the Board for its passion and efforts in composing the proposed rule amendments.

The Board did not address these concerns.

James W. Perkins III, President of the Board of Directors for Cumberland Heights Alcohol and Drug Treatment

Centers, responded via letter to the proposed rule amendments. The letter states that Cumberland Heights is greatly concerned by the proposed changes to the current LADAC licensure rules and regulations. They cite a current shortage of counselors due to recent restrictions on certification and licensure and are concerned that these amendments will cause an even greater decrease in the numbers of this specialty discipline. Cumberland Heights believes the focus should not be solely on education but also on mastery of specific knowledge, skills, and attitudes, the core of which is represented in the current Licensed Alcohol and Drug Abuse Counselor training, supervision, and licensing process. It does support the maintenance of the current education requirements but proposes that specific education and experience should be a requirement for those with more general mental health degrees who wish to practice in the addictions treatment field. Cumberland Heights is additionally opposed to degree requirements (as outlined for a Level II LADAC) for Qualified Clinical Supervisor. It believes that providing initial and continuing education relevant to addiction treatment specific to clinical supervision would be much more helpful. The letter concludes by stating, "Cumberland Heights therefore adamantly opposes any threat to the current pathways, supervision requirements, and independent practice of Tennessee's licensed alcohol and drug abuse counselors."

The Board did not specifically address the letter, but the Board did address the issues in the letter during the rulemaking hearing in its response to Butch Glover's public comments on behalf of Cumberland Heights.

Butch Glover, co-author of the above-mentioned letter, commented on behalf of Cumberland Heights where he is the Chief Political Officer. Glover points out the unique position of Cumberland Heights stating from the above-mentioned letter, "[a]s one of the oldest alcohol and drug treatment centers in the nation, Cumberland Heights has treated over 100,000 patients ... [and] Cumberland Heights Is in a position to have observed a variety of trends within the addiction treatment industry, including the evolution of certification, and then licensure of alcohol and drug abuse counselors in Tennessee." His comments centered on the amendments to scope and licensure. He fears the continuing regulations would cause further reduction of practitioners in the profession as he currently is having difficulty finding qualified individuals to offer alcohol and drug counseling services; there are currently 500 LADACs in Tennessee according to the letter submitted by Cumberland Heights. He also commented on the importance of knowledge, skills, and attitude. Additionally, Glover argued that the rules did not allow those counselors holding a bachelor's degree to practice independently and that the programs to obtain such a degree were difficult to locate and small in number. He concludes by addressing concerns that the degree requirement would lead to rising costs and limit specialty services to those who need them most and noted that there is no evidence linking higher degrees with more successful patient outcomes.

The Board responded to Mr. Glover by stating that its intention was to increase the number of Licensed Alcohol and Drug Abuse Counselors and that the implementation of degree requirements would actually better accomplish this goal. The Board also stated that only Level I counselors were barred from operating independent practices.

Toby Abrams, an independent Licensed Alcohol and Drug Abuse Counselor, addressed the Board in support of the rules. She referenced Mr. Glover's earlier statements and added that the Board is addressing quality of services which is increased in the proposed rules. She says, "people are part of a revolving door...we are not treating the essence of what needs to be treated when we are dealing with abuse... we are not getting to the core of the addiction." She states that the Board intends to raise this level of service across Tennessee and that purely raising the number of Licensed Alcohol and Drug Abuse Counselors without raising requirements will not solve the problems in the field because the practice needs to become more professional, not less professional to become more successful in treatment. She strongly commended the Board for its time and efforts.

Mary Linden Salter, a representative of the Tennessee Association of Alcohol, Drug and other Addiction Services (Taadas), addressed the Board in support of the rules in general while also addressing support for the comments of TAMHO and others seeking to have other licensed professionals be accepted as qualified supervisors under these rules to help grow the profession.

The Board addressed Ms. Salter's comments by leaving room for possible amendments in the future as the requested amendment was not covered under the current scope of rulemaking.

Cindy Stewart Freeman, representative of a group of sixteen (16) Licensed Alcohol and Drug Counselors and twelve (12) LADAC applicants, submitted a letter to the Board with concerns about the proposed rules. The letter cites the Twelve Step Program and its origins and the Certification process in Tennessee to show the history of alcohol and drug counseling in Tennessee. The letter states, "[skilled and dedicated professionals have arisen...without the requirement for a specific educational degree because our experience has shown us that achieving these degrees, while valuable in and of themselves, does not demonstrate mastery of the specialty competencies crucial to an addiction

counselor…there is no evidence to show that patient outcomes are superior for those patients treated by [the] degreed LADAC versus the non-degreed LADAC practitioner." Freeman also addressed concerns for a declining specialty stating, "[put simply, the net effect could be less Licensed Alcohol and Drug Abuse Counselors and more mental health licensed clinicians for whom the demonstration of addiction treatment competence is not mandated," The letter concludes, "[therefore, we, the undersigned, who are both Licensed Alcohol and Drug Abuse Counselors and those who are in the process of pursuing licensure, strongly support the maintenance of our current non-tiered licensure system and our current requirements to achieve that license." The group also proposed rule language in the letter requesting to amend scope of licensure to allow Level 1 Licensed Alcohol and Drug Abuse Counselors to provide drug abuse counseling services in private practice after meeting certain requirements and/or conditions. The group also proposed amending language for qualification of licensure to provide for a degree in any health-related field.

The Board addressed only the concern pertaining to licensure and accepted to add the language, "in a health- related field" to licensure qualifications.

Cindy Stewart Freeman also addressed the Board at the rulemaking hearing on behalf of these same individuals criticizing the degree requirement with fears the proposed rules would result in less trained Licensed Alcohol and Drug Counselors in practice and an increase in mental health workers offering alcohol and drug counseling services who do not undergo the same current training required for Licensed Alcohol and Drug Abuse Counselors. Ms. Freeman stated that she has a master's degree in counseling and a bachelor's degree in nursing and that neither of those degrees gave her the education she needed to be a licensed alcohol and drug abuse counselor. She received this education from her mentors in the program, workshops, and the testing competencies she had to go through to become a LADAC.

The Board chose not to address these comments.

Charlie Hiatt, a representative of The Tennessee Association for Addiction Professionals (TAAP), addressed the Board in support of the proposed rules. He criticized those counselors not supporting the rules, offering that they did not want to advance the field. He commented that the economic reality is that professionals must now have degrees to be reimbursed for services citing legislation in other states. He further stated, "we must embrace this economic reality moving forward in our field." Mr. Hiatt also acknowledged the grandfather clause should alleviate the fears of those counselors afraid that the proposed rules will vastly reduce the number of current qualified applicants. He concluded by acknowledging support for the comments of TAMHO and Ms. Benson concerning clinical supervision.

The last comment at the rulemaking hearing came from Martin Starr, a self-employed Licensed Alcohol and Drug Abuse Counselor. He addressed concerns that the proposed rules would leave no room for advancement for current Level I Licensed Alcohol and Drug Abuse Counselors. Without a bachelor's degree, people who have been practicing for several years as a Level I Licensed Alcohol and Drug Abuse Counselor could not obtain Level II status.

The Board responded to Mr. Starr by indicating that the proposed rules, through the grandfathering clause, allows for all current Level I Licensed Alcohol and Drug Abuse Counselors to become Level II Licensed Alcohol and Drug Abuse Counselors on July 1, 2015 if they have met the requirements set out in the rules for such advancement.

Ann Nothnagle, an independent Licensed Alcohol and Drug Abuse Counselor holding an MA, submitted a letter to the Board regarding the proposed rule amendments. She states, "I and many others in the field believe that the proposed rule changes will promote the recognition of the LADAC credential as a body of well informed, compassionate and capable addiction counselors." She also raises concerns that many seem to feel that LADACs without advanced degrees will not be appreciated for their expertise. She addresses these concerns by stating, "[t]he rule changes in my opinion enhance the professionalism of the LADACs regardless of advanced degree status." Ms. Nothnagle is very much in favor of the proposed rule amendments.

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)

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

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

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

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

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

The proposed rules are not written with special consideration for the flexible compliance and/or reporting 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 amend the requirements for licensure and to implement a tiered licensing system for Licensed Alcohol and Drug Abuse Counselors in the State of Tennessee.

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

The compliance requirements throughout the proposed rules are as “user-friendly” as possible while still allowing the division to achieve its mandated mission in licensing and regulating Licensed Alcohol and Drug Abuse Counselors. The rules also contain a provision to “grandfather” all licensees who were working as Licensed Alcohol and Drug Abuse Counselors prior to the implementation of these rules.

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

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

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

The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.

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

The proposed rules do not create unnecessary entry barriers or other effects that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Alcohol and Drug Abuse Counselors.

Rulemaking hearing date: January 17, 2014

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

   Licensed Alcohol and Drug Abuse Counselors, and those that employ them, such as licensed alcohol and drug facilities, recovery centers, and other services programs, will be affected.

2. **Identification and estimate of the number of small businesses subject to the proposed rule:**

   The proposed rules may affect those Licensed Alcohol and Drug Abuse Counselors who are in private practice. However, the Board has proposed that all current licensees be "grandfathered" in prior to the enactment of these rules.

3. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The Board has not proposed any new reporting, recordkeeping, or administrative costs associated with the changes to the rules for Licensed Alcohol and Drug Abuse Counselors.

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

   Licensed Alcohol and Drug Abuse Counselors and businesses that employ them will be benefited. Overall, the profession will increase their level of knowledge, abilities, and experience in delivering services. The Licensed Alcohol and Drug Abuse Counselors will also be more competitive with the licensure requirements for other states. The changes to the rules will also allow those applicants who have bachelors and master's degrees to apply for and obtain licensure more quickly than under the prior Rules.

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

   These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

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

   Federal: The Board is not aware of any federal counterparts.

   State: The Board is not aware of any state counterparts.

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

   Current small businesses are unlikely to be impacted by this rule, as they will be "grandfathered" in. If small businesses were to be exempted from the requirements of the rule, little impact would occur.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), “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 regulation may have a projected financial impact on local governments.”

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

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For Department of State Use Only

Sequence Number: 03-28-15
Rule ID(s): 5903
File Date: 3/27/15
Effective Date: 6/25/15

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:	Board of Alcohol and Drug Abuse Counselors
Division:	
Contact Person:	Caroline Tippens, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Caroline.Tippens@tn.gov

Revision Type (check all that apply):
X 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**
1200-30-01	Rules Governing Licensure of Alcohol and Drug Abuse Counselors
Rule Number	**Rule Title**
1200-30-01-.01	Definitions
1200-30-01-.02	Scope of Practice
1200-30-01-.03	Necessity of Licensure
1200-30-01-.04	Qualifications for Licensure.
1200-30-01-.05	Licensure Process
1200-30-01-.08	Examinations
1200-30-01-.10	Supervision
1200-30-01-.12	Continuing Education

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RULES
OF
BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS

CHAPTER 1200-30-01
RULES GOVERNING LICENSURE OF ALCOHOL AND DRUG ABUSE COUNSELORS

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1200-30-01-.01 DEFINITIONS.

(1) Advertising. Commercial communication which includes, but is not limited to, business solicitations with or without limiting qualifications, by a card, sign or device issued to a person; a sign or marking in or on any building; or, in any newspaper, magazine, directory or other printed material. Advertising also includes business solicitations communicated by an individual, radio, video or television broadcasting or any other means designed to secure public attention.

(2) Applicant. Any individual seeking licensure by the Board who has submitted an official application and paid the application fee.

(3) Board. The Board of Alcohol and Drug Abuse Counselors established by T.C.A. §§ 68-24-604, et seq.

(4) Commissioner. The Commissioner of the Department of Health or his/her designee.

(5) Contact hour. Sixty (60) minutes in a required activity, including licensure experience and continuing education.

(6) Continuing education. Education beyond the basic initial licensure educational requirement which is related to the practice of alcohol and drug abuse counseling.

(7) Department. The Tennessee Department of Health, Division of Health Related Boards.

(8) Fee. Money, gifts, services or anything of value offered or received as compensation in return for rendering services; also, the required fee(s) pursuant to these rules.

(9) Good moral character. The quality of being well regarded in personal behavior and professional ethics.

(10) He/she, him/her. When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.

(11) Hold oneself out. To represent one's self to the public as having a particular status by means of stating on signs, mailboxes, address plates, letterhead, announcements, business cards or other instruments of professional identification.

(Rule 1200-30-01-.01, continued)

(12) License. The document issued to an applicant who successfully completes the licensure process.

(13) Licensed Alcohol and Drug Abuse Counselor or "licensee". Any person who has met the qualifications for licensed Alcohol and Drug Abuse Counselor and holds a current, unexpired, unsuspended or unrevoked license which has been lawfully issued by the Board.

(14) Licensure training supervision. On-going, direct clinical review for the purpose of training or teaching, by a qualified supervisor who supervises the performance of a person's interaction with a client and provides regular documented face-to-face consultation, guidance and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes and direct observation.

(15) MAC. Master Addiction Counselor Exam.

~~(15)~~ (16) NAADAC. The Association for Addiction Professionals.

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~~(16) Qualified Supervisor. A person who provides licensure training supervision for Alcohol and Drug Abuse Counselors. Such a person must be currently licensed in good standing as an Alcohol and Drug Abuse Counselor, have held said license for at least five (5) years and either have at least two (2) years experience supervising Alcohol and Drug Abuse Counselors or have completed at least thirty-six (36) contact hours of supervised supervisory work.~~

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(17) Qualified Clinical Supervisor. A person who meets the requirements for a qualified clinical supervisor, as defined in Rule 1200-30-01-.10(2) or (3).

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~~(17)~~ (18) Regional Training Coordinator. One of seven regional institutional/agency providers of alcohol and drug abuse treatment services with whom the Department contracts to deliver training to other providers of alcohol and drug abuse treatment services. Each of these providers designates one of their professional staff members to be the individual Regional Training Coordinator. These Coordinators can be identified by contacting the Bureau of Alcohol and Drug Abuse Services Training Section.

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~~(18)~~ (19) Retirement. Voluntary deactivation of the Board issued license.

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Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-604, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed August 19, 2002; effective November 2, 2002. Amendments filed November 2, 2005; effective January 16, 2006.*

1200-30-01-.02 SCOPE OF PRACTICE.

~~(1) Counseling for alcohol and other drugs of abuse includes: the evaluation and treatment of problems, misperceptions and misconceptions of persons who abuse mood-altering chemicals within the context of individual, group, familial and significant other relationships, and of those persons who have had their lives significantly impacted by another person's abuse of alcohol or other drugs. Counseling for alcohol and other drugs of abuse includes the provision of the Primary Functions pursuant to paragraph (4) which may be performed by licensees.~~

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(Rule 1200-30-01-.02, continued)

(2) A Licensed Alcohol and Drug Abuse Counselor may evaluate and treat persons who have been significantly affected by compulsive gambling disorder as long as the licensee has completed no less than sixty (60) additional hours of specialized education related to compulsive gambling disorder in the form of formal classroom hours, annual continuing education hours or a combination thereof. The licensee's clinically supervised counseling experience must have included contact with no less than ten (10) patients impacted by a compulsive gambling disorder under the supervision of a supervisor who had obtained no less than sixty (60) formal classroom hours of instruction related to compulsive gambling disorder.

(3) Nothing in this chapter shall be construed as permitting any person licensed as an Alcohol and Drug Abuse Counselor to perform psychological testing intended to measure and/or diagnose mental illness. Consistent with each counselor's formal education and training, licensees may administer and utilize appropriate assessment instruments which identify elements of perceptual inability to recognize empirical facts, problems of appropriately displaying emotions and inappropriate responses to the environment of individuals, couples and families as part of the alcohol and other drugs of abuse therapy process or in the development of a treatment plan in the context of chemical abuse systems.

(4) Nothing in this chapter shall be construed as permitting an individual licensed as an Alcohol and Drug Abuse Counselor to administer, dispense, or prescribe drugs or in any manner engage in the practice of medicine as defined by Tennessee law.

(5) Primary Functions of the licensed Alcohol and Drug Abuse Counselor.

(a) Screening. The process by which a client is determined to be eligible for admission to a particular program.

(b) Intake. The administrative and initial assessment procedures for admission to a program.

(c) Orientation - Describing to the client the general nature and goals of the program including rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program.

(d) Counseling (individual, group and significant others). The utilization of special skills to assist individuals, families or groups in achieving objectives through exploration of a problem and its ramifications, examination of attitudes and feelings, considerations of alternative solutions and decision making.

(e) Case management. Activities which bring services, agencies, resources or individuals together within a planned framework of action toward the achievement of established goals. It may involve liaison activities and collateral contacts.

(f) Crisis intervention. Those services which respond to an alcohol and/or drug abuser's needs during acute emotional and/or physical distress.

(g) Assessment. Those procedures by which a counselor/program identifies and evaluates an individual's strengths, weaknesses, problems and needs for the development of the treatment plan.

(h) Treatment planning. The process by which the counselor and the client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized.

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(Rule 1200-30-01-.02, continued)

~~(i) Client education. Providing information to individuals and groups concerning alcohol and other drugs of abuse and the services and resources available.~~

~~(j) Referral. Identifying the needs of the client that cannot be met by the counselor or agency, as well as assisting the client in utilizing the support systems and community resources available.~~

~~(k) Reports and recordkeeping. Documenting the client's progress in achieving the client's goals.~~

~~(l) Consultation with other professionals in regard to client treatment/services. Communicating with other professionals to assure comprehensive, quality care for the client.~~

(1) A Level I Licensed Alcohol and Drug Abuse Counselor may provide alcohol and drug abuse counseling services in an alcohol and drug abuse treatment program or a recovery support program, or any program providing alcohol and drug abuse services other than a private practice in which the Level I Licensed Alcohol and Drug Abuse Counselor is self-employed. Such services shall include the eight (8) domains listed in T.C.A. § 68-24-606.

(2) A Level II Licensed Alcohol and Drug Abuse Counselor may provide alcohol and drug abuse counseling services in an alcohol and drug abuse treatment program, or a recovery support program or any program providing alcohol and drug abuse services or in private practice. Such services shall include the eight (8) domains listed in T.C.A § 68-24-606. A Level II Licensed Alcohol and Drug Abuse Counselor may apply to the Board to become a Qualified Clinical Supervisor after meeting the Board's requirements for such credential.

(3) Counseling for alcohol and other drugs of abuse includes: the evaluation and treatment of problems, misperceptions and misconceptions of persons who abuse mood-altering chemicals. Counseling for alcohol and other drugs of abuse includes the provision of the eight (8) domains listed in T.C.A. § 68-24-606.

(4) Both Level I and Level II Licensed Alcohol and Drug Abuse Counselors may evaluate and treat persons who have been significantly affected by compulsive gambling disorder as long as the licensee has completed no less than sixty (60) additional hours of specialized Board-approved education related to compulsive gambling disorder, annual continuing education hours or a combination thereof. The licensee's clinically supervised counseling experience must have included contact with no less than ten (10) patients impacted by a compulsive gambling disorder under the supervision of a supervisor who had obtained no less than sixty (60) formal classroom hours of instruction related to compulsive gambling disorder.

(5) Nothing in this chapter shall be construed as permitting any person licensed as a Licensed Alcohol and Drug Abuse Counselor to perform psychological testing intended to measure and/or diagnose mental illness. Consistent with each counselor's formal education and training, licensees may administer and utilize appropriate assessment instruments which identify elements of perceptual inability to recognize empirical facts, problems of appropriately displaying emotions and inappropriate responses to the environment of individuals, couples and families as part of the alcohol and other drugs of abuse therapy process or in the development of a treatment plan in the context of chemical abuse systems.

(6) Nothing in this chapter shall be construed as permitting an individual licensed as a Licensed Alcohol and Drug Abuse Counselor to administer, dispense, or prescribe drugs or in any manner engage in the practice of medicine as defined by Tennessee Law.

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(Rule 1200-30-01-.02, continued)

(7) The professional practice domains and transdisciplinary competencies in which Licensed Alcohol and Drug Abuse Counselors may engage are as follows:

(a) Clinical Evaluation;

(b) Treatment Planning;

(c) Referral;

(d) Service Coordination;

(e) Counseling;

(f) Client, family, and community education;

(g) Documentation; and,

(h) Professional and ethical responsibilities.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605 through 68-24-609.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed August 5, 2011; effective November 3, 2011.*

1200-30-01-.03 NECESSITY OF LICENSURE.

~~(1) Only persons who are licensed by the Board may represent themselves as licensed Alcohol and Drug Abuse Counselors or hold themselves out to the public as being licensed by means of using a title on signs, mailboxes, address plates, letterheads, announcements, telephone listings, business cards, or other instruments of professional identification.~~

(1) Only persons who are licensed by the Board may represent themselves or practice as Licensed Alcohol and Drug Abuse Counselors or hold themselves out to the public as being licensed by means of using a title on signs, mailboxes, address plates, letterheads, announcements, telephone listings, business cards, or other instruments of professional identification.

(2) No person shall hold himself out to the public by a title or description of services incorporating the words licensed Alcohol and Drug Abuse Counselor unless he is licensed by the Board. Nothing in this rule shall prohibit a person from stating or using the educational degrees which he has obtained.

(3) The provisions of this chapter do not apply to a person who is preparing for the practice of alcohol and drug abuse counseling under a qualified supervisor in a training institution or facility or supervisory arrangement pursuant to these rules and such person is designated by such titles as "alcohol and drug abuse counseling intern", "alcohol and drug abuse counseling trainee" or other designations clearly indicating a training status.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000.*

1200-30-01-.04 QUALIFICATIONS FOR LICENSURE.

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(Rule 1200-30-01-.04, continued)

~~(1) Licensure by examination. Prior to submitting an application for licensure, each of the following minimum qualifications must be met:~~ **Formatted:** Font color: Red, Strikethrough

~~(a) The applicant must have attained twenty-one (21) years of age.~~

~~(b) The applicant must be highly regarded as possessing good moral character and professional ethics, as specified in rule 1200-30-01-.13.~~ **Formatted:** Font color: Red, Strikethrough

(1) Licensure by examination. **Formatted:** Indent: Left: 0", First line: 0.38"

(a) Prior to submitting an application to become a Level I Licensed Alcohol and Drug Abuse Counselor, each of the following minimum qualifications must be met: **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The applicant must have attained twenty-one (21) years of age. **Formatted:** Indent: First line: 0.13"

2. The applicant must be highly regarded as possessing good moral character and professional ethics, as specified in Rule 1200-30-01-.13. **Formatted:** Indent: Hanging: 0.38"

3. The applicant must have a high school diploma or a high school equivalency diploma. **Formatted:** Indent: Hanging: 0.38"

4. The applicant must have completed six thousand (6000) hours of experience where the applicant has performed all of the eight (8) domains, as listed in TCA § 68-24-606, while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board. **Formatted:** Indent: Hanging: 0.38"

5. The applicant must have completed two hundred seventy (270) total hours of alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606. Six (6) hours of the 270 total hours of education shall pertain to alcohol and drug abuse counseling professional ethics. **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

6. The applicant must have completed a written philosophy of treatment, as defined in the licensure application. **Formatted:** Indent: Left: 1", Hanging: 0.5" **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

7. The applicant must pass a jurisprudence examination approved by the Board. **Formatted:** Indent: Hanging: 0.38"

8. The applicant must pass the National Certified Addiction Counselor (NCAC) Level I written examination that is administered by the National Certification Commission for Addiction Professionals (NCC AP) or the Master Addiction Counselor (MAC) written examination. **Formatted:** Indent: Hanging: 0.38"

(b) Prior to submitting an application to become a Level II Licensed Alcohol and Drug Abuse Counselor, each of the following minimum qualifications must be met: **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The applicant must have attained twenty-one (21) years of age. **Formatted:** Indent: Left: 1.13"

2. The applicant must be highly regarded as possessing good moral character and professional ethics, as specified in Rule 1200-30-01-.13. **Formatted:** Indent: Hanging: 0.38"

3. The applicant must: **Formatted:** Indent: First line: 0.13"

(i) Have a bachelor's degree in a behavioral health related field or higher level degree in a non-behavioral health related field from an accredited institution of higher learning, and submit an accredited institution of

(Rule 1200-30-01-.04, continued)

higher learning, and submit an official transcript, have completed two (2) years of full time or four thousand (4000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606.

(ii) Have a master's or higher level degree in a behavioral health related field from an accredited institution of higher learning, and submit an official transcript, and have completed one (1) year of full time experience or two thousand (2000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606.

4. The applicant must have completed a written philosophy of treatment, as defined in the licensure application.

5. The applicant must pass a jurisprudence examination approved by the Board.

6. The applicant must pass the National Certified Addiction Counselor (NCAC) Level II written examination that is administered by the National Certification Commission for Addiction Professionals (NCC AP) or the Master Addiction Counselor (MAC) written examination.

7. The applicant must pass an oral examination demonstrating competency in the eight (8) domains listed in T.C.A. § 68-24-606.

8. Each person currently licensed in good standing as a Licensed Alcohol and Drug Abuse Counselor before January 1, 2016 shall thereafter be licensed as a Level II Licensed Alcohol and Drug Abuse Counselor. The Board will not impose any additional fee or require any additional application for the issuance of a license pursuant to this section.

(c) Education. The education requirement must be completed prior to the date of application.

~~1. A high school diploma or a G.E.D. certificate, a certified or notarized copy of which is to be included with the application.~~

1. The Level I applicant must:

(i) Have a high school diploma or a high school equivalency diploma, a certified or notarized copy of which is to be included in the application

(ii) Have completed two hundred seventy (270) total hours of alcohol and drug abuse counseling education and training within the eight (8) domains, as listed in TCA § 68-24-606 while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor. Six (6) hours of the 270 total hours of education shall pertain to alcohol and drug abuse counseling professional ethics. There is no time limit in which this education must have been obtained.

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~~2. Applicants must have at least two hundred and seventy (270) contact hours of formal classroom training in chemical dependency, with a minimum number of ten (10) contact hours documented on each Primary Function pursuant to rules 1200-30-01-.02(4) and .05(1)(a)8. The two hundred and seventy (270) contact hours may be acquired through a single training program giving the required number of hours or through a combination of short-term classroom training programs. There is no time limit in which education is to have been gained.~~

~~3. Applicants must furnish documentation of six (6) contact hours of education in ethics. This six (6) hour requirement may be part of the two hundred and seventy (270) contact hours of education required for licensure.~~

2. The Level II applicant must:

(i) Have a bachelor's degree in a behavioral health related field or higher level degree in a non-behavioral health related field from an accredited institution of higher learning, and submit an official transcript, have completed two (2) years of full time or four thousand (4000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have completed (270) total hours of alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606.

(ii) Have a master's or higher level degree in a behavioral health related field from an accredited institution of higher learning, and submit an official transcript, and have completed one (1) year of full time experience or two thousand (2000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have completed (270) total hours of alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606.

(iii) There is no time limit in which the (270) total hours of alcohol and drug abuse counseling education and training within the eight domains must have been obtained.

3.4. Applicants seeking to evaluate and treat persons who have been significantly affected by compulsive gambling disorder under Rule 1200-30-01-.02(2) shall have no less than sixty (60) additional hours of specialized education relating to compulsive gambling disorder. Such education shall be in the form of formal classroom hours, annual continuing education hours, or a combination of such hours.

(d) Experience.

~~1. Applicants shall furnish documentation of six thousand (6,000) clinically supervised counseling experience contact hours, during which all twelve (12) alcohol and drug abuse counseling Primary Functions have been performed over a time period of a minimum of three (3) years.~~

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(Rule 1200-30-01-.04, continued)

~~2. The six thousand (6,000) clinically supervised alcohol and drug abuse counseling experience contact hours, during which all twelve (12) Primary Functions have been performed over a time period of a minimum of three (3) years, may be paid or "volunteer" (unpaid), or a combination thereof.~~

1. The Level I applicant must have completed six thousand (6000) hours of experience during which the applicant has performed all of the eight (8) domains, as listed in TCA § 68-24-606, over a time period of a minimum of three (3) years, which may be paid or "volunteer" (unpaid), or a combination thereof, while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board.

2. The Level II applicant must:

(i) Have a bachelor's degree in a behavioral health related field or higher level degree in a non-behavioral health related field from an accredited institution of higher learning, and have completed two (2) years of full time or four thousand (4000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board.

(ii) Have a master's or higher level degree in a behavioral health related field from an accredited institution of higher learning, and have completed one (1) year of full time experience or two thousand (2000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board.

3. In order for "volunteer" (unpaid), clinically supervised counseling experience to be given credit, the "volunteer" experience must have been accrued in a facility or agency where the institution or agency head authorized the volunteer program, specifically appointed/designated in writing the person as a participant in that volunteer program, and where the services and duties were performed and supervised pursuant to written guidelines, i.e., a "job description".

4. Applicants seeking to evaluate and treat persons who have been significantly affected by compulsive gambling disorder under Rule 1200-30-01-.02(2) shall provide evidence that a portion of the clinically supervised counseling experience included contact with no less than ten (10) patients impacted by a compulsive gambling disorder.

(e) An applicant shall successfully complete the examinations as required in Rule 1200-30-01-.08. The applicant shall also provide to the Board an authorization for release of examination scores along with his/her application.

~~(2) Licensure by reciprocity. Individuals seeking licensure by reciprocity must meet the following qualifications:~~

(2) Individuals seeking licensure by reciprocity as a Level I or Level II Licensed Alcohol and Drug Abuse Counselor must meet the following qualifications:

(a) The applicant must have attained twenty-one (21) years of age.

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(b) The applicant must be highly regarded as possessing good moral character and professional ethics, as specified in rule 1200-30-01-.13.

~~(c) The applicant must hold a current license or equivalent from another state. The other state's standards for licensure must be comparable to or exceed the requirements for licensure in Tennessee.~~

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(c) The applicant must hold a current license or equivalent from another state. The other state's standards for licensure must be comparable to or exceed the requirements for the level of licensure sought in Tennessee.

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(d) An applicant shall successfully complete the jurisprudence examination as required in Rule 1200-30-01-.08.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, 68-24-606 and 68-24-608.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed June 15, 2004; effective August 29, 2004. Amendments filed August 5, 2011; effective November 3, 2011.*

1200-30-01-.05 LICENSURE PROCESS.

(1) To become licensed as an Alcohol and Drug Abuse Counselor in Tennessee an applicant must comply with the following procedures and requirements:

(a) Licensure by examination.

1. An application packet shall be requested from the Department.

2. Applications will be accepted by the Board administrator throughout the year. Supporting documents required by the application instructions and these rules must be received by the Board administrator within sixty (60) days of receipt of the application or the file will be closed and to resume the licensure process a new application must be filed. Application files which are completed on or before the thirtieth (30th) day prior to a Board meeting will ordinarily be processed at that meeting.

3. An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

4. At the time the application is submitted, an applicant shall pay the nonrefundable application fee as provided in these rules.

5. An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.

6. An applicant shall attach to his application a signed passport style photograph taken within the preceding twelve (12) months. The back of the photograph is to be signed by the applicant.

(Rule 1200-30-01-.05, continued)

7. An applicant shall submit evidence of good moral character and professional ethics. Such evidence shall include two (2) recent (dated within the preceding twelve (12) months), original, signed letters from mental health professionals, one of which must be a licensed Alcohol and Drug Abuse Counselor in good standing, attesting to the applicant's personal character and professional ethics and typed on the signator's letterhead. The applicant shall also submit a signed and notarized affidavit stating the applicant is in compliance with alcohol and drug abuse counselor ethical standards and these rules.

~~8. Applicants shall submit verification of having completed a minimum of three (3) years clinically supervised substance abuse counseling experience (6,000 contact hours) during which all twelve (12) Primary Functions have been performed. This experience may have been acquired anytime prior to the submission of the application. The Board may ask for additional documentation to substantiate this required experience. Actual time spent in a recognized counselor internship or counselor trainee program may be substituted for up to one (1) of the three (3) years experience.~~

8. A Level I applicant shall submit verification of having completed a minimum of three (3) years clinically supervised substance abuse counseling experience (6000 contact hours) during which all eight (8) domains have been performed pursuant to TCA § 68-24-606. This experience may have been acquired at any time prior to the submission of the application. The Board may ask for additional documentation to substantiate this required experience. Actual time spent in a recognized counselor internship or counselor trainee program may be substituted for up to one (1) of the three (3) years of experience.

~~9. An applicant shall submit a notarized photocopy of his high school diploma or GED. If the applicant indicates holding a college degree, the applicant must request that a transcript from his degree granting institution be submitted directly from the school to the Board. The institution granting the degree must have been accredited at the time the degree was granted. The transcript must show that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for licensure.~~

9. For Level II applicants:

(i) Have a bachelor's degree in a behavioral health related field or higher level degree in a non-behavioral health related field from an accredited institution of higher learning, and submit an official transcript, have completed two (2) years of full time or four thousand (4000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have completed (270) total hours of alcohol and drug abuse counseling education and training within the eight domains, as listed in TCA § 68-24-606.

(ii) Have a master's or higher level degree in a behavioral health related field from an accredited institution of higher learning, and submit an official transcript, and have completed one (1) year of full time experience or two thousand (2000) hours of experience while providing alcohol and drug abuse counseling services under the direct supervision of a Qualified Clinical Supervisor who meets the requirements of the rules of the Board and have completed (270) total hours of alcohol and drug abuse

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counseling education and training within the eight domains, as listed in TCA § 68-24-606.

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~~10. An applicant shall complete and submit the application worksheet for the contact hours of classroom training and/or the required clinically supervised practice experience, along with proof of attendance.~~

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10. An applicant shall submit a notarized photocopy of his high school diploma or high school equivalency diploma. If the applicant indicates holding a college degree, the applicant must request that a transcript from his degree granting institution be submitted directly from the school to the Board. The institution granting the degree must have been accredited at the time the degree was granted. The transcript must show that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for licensure.

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11. An applicant shall successfully complete the examinations as required by Rule 1200-30-01-.08.

(b) Licensure by reciprocity. The Board may issue a license to any individual who holds a current license in good standing or its equivalent from another state, upon the determination that the standards for licensure in the other state are comparable to or exceed the current requirements for licensure in Tennessee.

1. An application packet shall be requested from the Department.

2. Applications will be accepted throughout the year. Supporting documents required by the application instructions and these rules must be received by the Board administrator within sixty (60) days of receipt of the application or the file will be closed and a new application must be filed to resume the licensure process. Application files which are completed on or before the thirtieth (30th) day prior to a Board meeting will ordinarily be processed at that meeting.

3. An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

4. At the time the application is submitted, an applicant shall pay the nonrefundable application fee as provided in these rules.

5. An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.

6. An applicant shall attach to his application a signed passport style photograph taken within the preceding twelve (12) months. The back of the photograph is to be signed by the applicant.

7. An applicant shall submit evidence of good moral character and professional ethics. Such evidence shall include two (2) recent (dated within the preceding twelve (12) months), original, signed letters from mental health professionals, one of which must be a licensed Alcohol and Drug Abuse Counselor in good

(Rule 1200-30-01-.05, continued)

standing, attesting to the applicant's personal character and professional ethics and typed on the signator's letterhead. The applicant shall also submit a signed and notarized affidavit stating that the applicant is in compliance with alcohol and drug abuse counselor ethical standards and these rules.

8. An applicant shall submit a copy of his original licensure or its equivalent with the license number from the original issuing state in effect at the time the original was issued.

9. An applicant must submit a copy of his most recent renewal certificate or its equivalent from the current issuing state with the number and expiration date.

10. The applicant shall provide the Board with a copy of current licensing statutes and rules from all states where the applicant is currently licensed.

11. The applicant shall direct the appropriate certification/licensing agency in his state to send an official statement which indicates that such certificate/license is in effect and in good standing and under what provision such certificate was issued (e.g., grandfathering, examination, reciprocity, endorsement, etc.).

12. An applicant shall successfully complete the jurisprudence examination as required in Rule 1200-30-01-.08.

(2) Each applicant shall disclose the circumstances surrounding any of the following:

(a) Conviction of any criminal law violation of any country or state, except minor traffic violations;

(b) The denial of licensure by any other state or territory of the United States or by any other entity assigned to the Division of Health Related Boards as provided in Rule 1200-10-1-.01 (3), or the professional discipline of the applicant in any state or territory of the United States or by any other entity assigned to the Division of Health Related Boards as provided in Rule 1200-10-1-.01 (3);

(c) Loss or restriction of licensure in any state or territory of the United States or by any other entity assigned to the Division of Health Related Boards as provided in Rule 1200-10-1-.01 (3); and

(d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action recognized under that country's or state's statutory, common, or case law.

(3) Each applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(4) All documents required to be submitted that were not issued or produced in English shall be translated into English and such translation shall be certified, along with the original document, as to authenticity by the issuing source.

(5) Application procedures shall be governed by Rule 1200-30-01-.07, and applicant review and licensure decisions shall be governed by Rule 1200-30-01-.15.

(Rule 1200-30-01-.07, continued)
Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 26, 2008; effective February 9, 2009.

1200-30-01-.08 EXAMINATIONS. ~~In addition to having filed an application, an individual seeking licensure by examination shall be required to successfully complete the Board's written, oral, and jurisprudence examinations. In addition to having filed an application, an individual seeking licensure by reciprocity shall be required to successfully complete the Board's jurisprudence examination.~~

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In addition to having filed an application, an individual seeking licensure by examination as a Level I Licensed Alcohol and Drug Abuse Counselor shall be required to successfully complete the Board's written and jurisprudence examinations, and an individual seeking licensure by examination as a Level II Licensed Alcohol and Drug Abuse Counselor shall be required to successfully complete the Board's oral, written, and jurisprudence examinations.

(1) Written examination.

~~(a) The written examination adopted by the Board is the examination developed by NAADAC and administered by its designated testing agency.~~

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(a) The written examination adopted by the Board is the examination developed by NAADAC/MAC and administered by its designated testing agency.

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(b) The Board shall include with its application materials information regarding the written examination.

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~~(c) Passing scores on the examination are determined by NAADAC and are adopted by the Board as constituting successful completion of the written examination.~~

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(c) Passing scores on the examination are determined by NAADAC/MAC and are adopted by the Board as constituting successful completion of the written examination.

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~~(d) NAADAC will notify both the Board and the candidate of his/her passing or failing status.~~

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(d) NAADAC/MAC will notify both the Board and the candidate of his or her passing or failing status.

(2) Oral examination.

(a) An oral examination is required for each applicant other than those applying by reciprocity. The applicant shall be eligible to sit for the oral examination only after obtaining a passing score on the written examination.

(b) The oral examination shall be administered by a panel consisting of

1. any three (3) members of the Board; or

2. a panel of three (3) examiners selected by the Board who

(i) possess active, unrestricted, and unencumbered licenses to practice alcohol and drug abuse counseling in Tennessee that have not been disciplined, restricted, or encumbered for the past five (5) years; and

(ii) if licensed or certified to practice alcohol and drug abuse counseling in other states, possess active, unrestricted, and unencumbered licenses to

(Rule 1200-30-01-.08, continued)

practice alcohol and drug abuse counseling in such other states that have not been disciplined, restricted, or encumbered for the past five (5) years; and

(iii) if licensed or certified to practice any other health-related profession in Tennessee or in any other state, possess active, unrestricted, and unencumbered licenses to practice such health-related professions that have not been disciplined, restricted, or encumbered for the past five (5) years.

(c) An oral examination is scheduled for each applicant as soon as reasonable after receipt of a passing score from the written examination. Notification of the test date and site of the oral examination will be provided to an applicant in writing from the Board at least thirty (30) days prior to the oral examination date.

(d) The oral examination of an applicant shall cover:

1. The applicant's knowledge of the content and interpretation of these rules and the NAADAC Code of Ethics.

~~2. The applicant's knowledge and skill of the Primary Functions as stated in Rule 1200-30-01-.02(4) and described in the Board's licensure application.~~

2. The applicant's knowledge and skill of the eight (8) domains as stated in Rule 1200-30-01-.02(7) and described in the Board's licensure application.

3. Other practice-related areas, including but not limited to past work history, professional experiences and hypothetical situations.

(e) The oral examination panel shall make a recommendation of pass or fail and the Board shall review such recommendation before making its decision. At its discretion, the Board may accept the examination panel's recommendation, reverse the recommendation, or request another examination by a new panel. The written report of the oral examination panel, including the panel recommendation, becomes a part of the applicant's licensure file. It is required that all oral examinations be audiotaped. At its discretion, the Board may review the entire contents of the audiotaped record before making its decision. The audiotaped record of every failed oral examination will be maintained at the Board office until the applicant has successfully passed the oral examination.

(f) The Board will notify the applicant of his/her passing or failing status within ten (10) working days of the Board's ratification of the oral examination results.

(3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.

(a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence examination from the Board's Internet web page that can be accessed at www.Tennessee.gov.

(b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.

(c) There is no fee for the jurisprudence examination.

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(Rule 1200-30-01-.08, continued)

(d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of alcohol and drug abuse counselors (T.C.A. §§ 68-24-604, et seq., and Chapter 1200-30-01 of the rules of the Tennessee Department of Health) and the NAADAC Code of Ethics. Copies of the applicable statutes, regulations, and the NAADAC Code of Ethics are available upon request from the Board's administrative office.

(e) The format of the examination shall be "open-book."

(f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.

(4) Re-examination.

~~(a) Written examination. Applicants who fail to pass the written examination may apply to the NAADAC for re-examination. Hand-scoring and/or appeal requests are to be directed to the NAADAC.~~

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(a) Written Examination. Applicants who fail to pass the written examination may apply to the NAADAC or the MAC for re-examination. Hand-scoring and/or appeal questions are to be directed to the NAADAC or MAC.

(b) Oral examination.

1. Applicants who fail to pass the oral examination may apply to the Board for re-examination.

2. It is not required that an applicant repeat the written examination in order to repeat the oral examination.

3. Should the applicant fail a second oral examination, the Board shall deny licensure pursuant to rule 1200-30-01.07. In such event, the applicant must then retake the written examination if the applicant reapplies.

(c) Jurisprudence Examination

1. Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for review.

2. It is not required that an applicant repeat the written or oral examinations in order to repeat the jurisprudence examination.

(5) If an applicant neglects, fails, or refuses to take any of the required examinations or fails to successfully complete the examinations within twelve (12) months after being approved, the application will be deemed abandoned. Such applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet the requirements in effect at the time of the new application.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment*

(Rule 1200-30-01-.08, continued)
filed August 19, 2002; November 2, 2002. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed November 26, 2008; effective February 9, 2009.

1200-30-01-.09 RENEWAL OF LICENSE.

(1) Renewal application.

(a) The due date for license renewal is the expiration date indicated on the licensee's renewal certificate.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(c) To be eligible for renewal, an individual must submit the following to the Board on or before the expiration date:

1. A completed and signed renewal application form; and

2. The biennial renewal fees as provided in these rules.

(d) Renewals may be issued administratively or by the Board.

(e) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.

(2) Reinstatement of Expired License

(a) Reinstatement of an expired license may be accomplished upon filing a reinstatement application and payment of reinstatement, renewal and late renewal fees pursuant to rule 1200-30-01-.06.

(b) An applicant for reinstatement must comply with the continuing education requirements of rule 1200-30-01-.12.

(c) If requested, an applicant for reinstatement shall appear before the Board for an interview.

(3) Anyone submitting a signed renewal or reinstatement application which is found to be untrue may be subject to disciplinary action as provided in these rules.

(4) Application procedures shall be governed by Rule 1200-30-01-.07, and applicant review and licensure decisions shall be governed by Rule 1200-30-01-.15.

(Rule 1200-30-01-.09, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed December 13, 2000; effective February 26, 2001. Amendment filed August 19, 2002; November 2, 2002. Amendment filed October 18, 2004; effective January 1, 2005.*

1200-30-01-.10 SUPERVISION.

~~(1) Pursuant to Rule 1200-30-01-.04, an applicant for licensure as an alcohol and drug abuse counselor shall present documentation, at the time the application is submitted, of completion of six thousand (6000) hours of clinical experience supervised by a supervisor who meets the requirements of paragraphs (2) or (3).~~

(1) Pursuant to Rule 1200-30-01-.04, an applicant for licensure as a Level I or Level II Licensed Alcohol and Drug Abuse Counselor shall present documentation, at the time the application is submitted, of completion of clinical experience hours that have been supervised by a supervisor who meets the requirements of paragraph (2) or (3).

(a) One hundred (100) hours of the six thousand (6000) hour requirement shall be face-to-face supervision.

1. No more than fifty (50) hours of the one hundred (100) hours may occur during any calendar year in which part of the six thousand (6000) supervised hours transpire.

2. No less than twelve (12) hours of the one hundred (100) hours may occur during any calendar year in which part of the six thousand (6000) supervised hours transpire.

(b) Group supervision may occur provided that the applicant has a minimum of six (6) face-to-face individual supervision hours per year.

(c) A Supervisor seeking to supervise an alcohol and drug abuse counselor subject to Rule 1200-30-01-.04(1)(d)4 shall obtain no less than sixty (60) formal classroom hours of instruction related to compulsive gambling disorder prior to undertaking such supervision.

(d) Documentation includes, but is not limited to, dates of supervision, beginning and ending times, names of clinicians present, topic areas discussed, clinical recommendations, follow-up on previous recommendations, professional issues/concerns, professional development needs/accomplishments, and number of cases reviewed per clinical participant with signatures of supervisor and all supervision participants.

(e) The supervisor shall follow methods of supervision used in accordance with a standard practice (e.g., Family Systems, Transactional Analysis, Reality Therapy, Gestalt, Psychodrama, etc.) or a combination of standard practices of the supervisor's choice.

(f) The supervisor shall maintain copies of records of supervision for eight (8) years. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(g) Failure to conduct supervision in accordance with these rules or falsification of the records of supervision is considered a breach of professional conduct and may result in disciplinary action as provided in Rule 1200-30-01-.15.

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(Rule 1200-30-01-.10, continued)

(2) Before supervision may begin, the supervisor of an applicant for licensure as an alcohol and drug abuse counselor shall obtain from the Board a Certificate of Qualified Clinical Supervision by meeting the following requirements:

~~(a) The supervisor has been a licensed alcohol and drug abuse counselor for at least five (5) years. The supervisor's license must be currently active, unencumbered, and unconditioned, and the supervisor must cease supervising if it becomes encumbered and/or conditioned; and~~

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(a) The supervisor has been a Level II Licensed Alcohol and Drug Abuse Counselor for at least five (5) years. The supervisor's license must be currently active, unencumbered, and unconditioned, and the supervisor must cease supervising if his or her license becomes encumbered and/or conditioned; and

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~~(b) The supervisor has two (2) years experience supervising alcohol and drug abuse counselors or has received at least thirty-six (36) contact (clock) hours of supervision (by a qualified supervisor) of his supervisory work by supervision of at least one (1) person doing alcohol and drug abuse counseling.~~

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(b) The supervisor has two (2) years of experience supervising alcohol and drug abuse counselors and has received thirty six (36) contact (clock) hours of supervision (by a qualified supervisor) of his or her supervisory work by supervision of at least one (1) person doing alcohol and drug abuse counseling and has obtained a minimum of thirty (30) hours of training specific to alcohol and drug clinical supervision, including six (6) hours of supervision ethics.

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(3) An applicant whose supervisor meets the requirements of paragraph (2) but is not licensed in Tennessee as an alcohol and drug abuse counselor may submit, with the licensure application, an approval request to the Board that documents the supervisor's qualifications. This request must include means by which verification of the qualifications may be independently confirmed (e.g., contact data for other state licensing or certification agencies, NAADAC, or proof of supervision).

(4) Supervision that is consistent with the regulations that were effective prior to the effective date of this rule amendment will be accepted as qualified supervision.

(a) Licensees providing clinical supervision when these rules become effective will be permitted to continue supervising applicants whose supervision had already begun.

(b) Under no circumstances shall a licensee begin providing new clinical supervision without meeting the requirements of paragraphs (2) or (3).

(5) Conflict of Interest - Supervision provided by the applicant's parents, spouse, former spouse, siblings, children, cousins, in-laws (present or former), aunts, uncles, grandparents, grandchildren, stepchildren, employees, present or former counselor, present or former romantic partner, or anyone sharing the same household shall not be acceptable toward fulfillment of licensure requirements. Any exceptions must be approved by the Board prior to such supervision. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payments for the actual supervisory hours.

(6) Accountability – In all cases the specific terms of the supervisory arrangement are the responsibility of the qualified supervisor upon whom it is incumbent to assure appropriate

(Rule 1200-30-01-.10, continued)

supervisory time. Likewise, it is the responsibility of the applicant to obtain supervision. The education, training, experience, and ongoing performance of the applicant must be considered by the supervisor. The arrangements for supervision must be agreed to by both the qualified supervisor and the applicant. Ultimately, the qualified supervisor of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605 and 68-24-608.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed November 2, 2005; effective January 16, 2006. Amendment filed August 5, 2011; effective November 3, 2011.*

1200-30-01-.11 LICENSURE RETIREMENT AND REACTIVATION.

(1) License holders who wish to retain their licenses, but not actively practice alcohol and drug counseling, may avoid expiration of licensure and/or compliance with the licensure renewal process by licensure retirement. A license may be retired by obtaining from and submitting to the Board an affidavit of retirement form along with any documentation which may be required.

(2) Any licensee whose license has been retired may reactivate the license by:

(a) Paying the licensure renewal fee.

(b) If requested, appearing before the Board for an interview regarding continued competence in the event of licensure retirement in excess of two (2) years.

(c) Successfully completing the written examination for licensure if licensure retirement was in excess of five (5) years and the Board determines that re-examination is necessary to protect the public.

(d) Complying with the continuing education requirements.

(3) Application procedures shall be governed by Rule 1200-30-01-.07, and applicant review and licensure decisions shall be governed by Rule 1200-30-01-.15.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed December 13, 2000; effective February 26, 2001.*

1200-30-01-.12 CONTINUING EDUCATION. ~~Each licensee is required to complete fifteen (15) contact hours of alcohol and drug abuse continuing education during each calendar year (January 1 to December 31). Nine (9) hours must be face to face and six (6) hours may be multi-media with at least three (3) of the fifteen (15) hours relating to ethics.~~

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Level I Licensed Alcohol and Drug Abuse Counselors, and Level II Licensed Alcohol and Drug Abuse Counselors must complete fifteen (15) contact hours of alcohol and drug abuse continuing education during each calendar year (January 1 to December 31). Nine (9) hours must be face to face and six (6) hours may be multi-media with at least three (3) of the fifteen (15) hours relating to ethics. A Qualified Clinical Supervisor (QCS) must complete a minimum of five (5) additional contact hours of training annually, in addition to the normal fifteen (15) contact hours necessary to maintain licensure. Such additional contact hours must be specific to Alcohol and Drug Clinical Supervision. Three (3) hours of the five (5) additional total hours of continuing education must be specific to clinical supervision ethics.

(Rule 1200-30-01-.12, continued)

(1) Continuing education for new licensees - For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to subparagraphs 1200-30-01-.04 (1) (c) and 1200-30-01-.05 (1) (a), shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.

(2) The following organizations and entities are authorized to present, sponsor, or approve continuing education courses, events, and activities related to the practice of alcohol and drug abuse counseling:

(a) Nationally or regionally accredited institutions of higher education

(b) NAADAC (The Association for Addiction Professionals)

(c) TAADAC (The Tennessee Association of Alcohol and Drug Abuse Counselors)

(d) Tennessee Department of Health

(e) TAADAS (The Tennessee Association of Alcohol, Drug and Other Addiction Services)

(f) TAMHO (The Tennessee Association of Mental Health Organizations)

(g) Tennessee Department of Mental Health.

(3) Continuing education program approval process for providers of education.

(a) All providers of continuing education not authorized by paragraph (2) must request and receive approval of their program content by the Board to fulfill the continuing education requirements set forth in this rule. Providers who intend to offer more than one (1) presentation of the same course, event, or activity during one (1) calendar year may combine in a single application the information required by subparagraph (3) (b) for the multiple presentations.

(b) Application for approval shall contain the topic, credentials of the speaker or presenter, a brief description of program content or content objectives, the date and length in minutes of each presentation, the place of instruction and the sponsoring institution or organization. Application for approval of Multi-Media courses, as provided in subparagraph (5) (c), shall submit this information on an annual basis as applicable, and shall also submit a brief description of the course format.

(c) All applications for approval must be submitted to the Board at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the educational offering. The Board shall review each application and shall rule on whether the offering(s) in whole or in part shall be accepted as valid for the purposes of the continuing education requirements of this rule. The decision of the Board shall be final in all such matters.

(4) Documentation.

(a) On a Board provided form, each licensee must check a box and/or enter his signature which indicates attendance and completion of all the required contact hours of continuing education and that such hours were obtained.

(Rule 1200-30-01-.12, continued)

(b) Each licensee shall retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of three (3) years from the end of the renewal period in which the course is completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(c) Documentation of continuing education includes:

1. A certificate verifying the individual's attendance at the continuing education program.

2. An original letter on official institution letterhead from the instructor of the graduate level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual.

3. An official transcript verifying credit hours earned. One semester academic credit hour is equivalent to fifteen (15) contact hours. One quarter academic credit hour is equivalent to twelve (12) contact hours.

4. A certificate or letter verifying successfully passing a written post experience examination to evaluate material retention upon completion of a Multi-Media course, as provided in subparagraph (5) (c). The certificate or letter must include the contact hours awarded (continuing education units must be converted to contact hours), date completed, program title, licensee's name, and license number.

(5) It is the licensee's responsibility, using his professional judgment, to determine whether or not a particular educational/training experience is applicable and appropriate to his professional development and meets the standards specified in these rules.

(a) If a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board may request a written description of the training and how it applies to the individual's professional practice. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next year.

(b) Continuing education credit or contact hours of training will not be allowed for the following:

1. Regular work activities, administrative staff meetings, case staffing/reporting, etc.;

2. Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations or banquet speeches;

3. Independent, unstructured or self-structured learning; or

4. Training specifically related to policies and procedures of an agency.

(c) Multi-Media

1. Notwithstanding the provisions of part (5) (b) 3., continuing education courses may be presented in the traditional lecture and classroom formats or, in

(Rule 1200-30-01-.12, continued)

accordance with paragraphs (2) and (3) and with successful completion of a written post experience examination to evaluate material retention, courses may be presented in Multi-Media formats. Multi-Media courses may include courses utilizing:

(i) The Internet

(ii) Closed circuit television

(iii) Satellite broadcasts

(iv) Correspondence courses

(v) Videotapes

(vi) CD-ROM

(vii) DVD

(viii) Teleconferencing

(ix) Videoconferencing

(x) Distance learning

~~2. A maximum of fifteen (15) contact hours may be granted for multi-media courses during each calendar year.~~ **Formatted:** Font color: Red, Strikethrough

2. A maximum of six (6) contact hours may be granted for multi-media courses during each calendar year. **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

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(6) Continuing education for reactivation of license.

(a) Reactivation of retired license.

~~1. Any individual requesting reactivation of a license which has been retired one or more years shall so indicate on a Board provided form which indicates the attendance and completion of thirty (30) continuing education hours. The continuing education hours must have been begun and successfully completed within twelve (12) months immediately preceding the date of requested reinstatement.~~ **Formatted:** Font color: Red, Strikethrough

1. Any individual requesting reactivation of a license which has been retired one or more years shall so indicate on a Board-provided form which indicates the attendance and completion of fifteen (15) continuing education hours. The continuing education hours must have been begun and successfully completed within twelve (12) months immediately preceding the date of the requested reinstatement.

2. The Board, upon receipt of a written request and explanation, may waive or condition any or all of the contact hours requirement for reactivation of a retired license in emergency situations.

(Rule 1200-30-01-.12, continued)

(b) Reactivation of revoked license – No person whose license has been revoked for failure to comply with the continuing education contact hours requirement may be reinstated without complying with the requirement. The continuing education hours will accumulate at the same rate and are required the same as those for licenses which are active. A license which has been revoked for noncompliance with the continuing education requirement shall also be subject to the late renewal fee.

(c) Reactivation of expired license – No person whose license has expired as a result of failure to comply with the renewal requirements of rule 1200-30-01-.09 may be reinstated without complying with the requirements of this rule. The continuing education hours will accumulate at the same rate and are required the same as those for licenses which are active. A license which has expired as a result of failure to comply with the renewal requirements of rule 1200-30-01-.09 shall also be subject to the late renewal fee.

(d) Any licensee requesting reactivation of either a retired or revoked license shall indicate on a Board provided form that he has complied with the continuing education requirement pursuant to this rule and that such continuing education hours were begun and successfully completed within twelve (12) months immediately preceding the date of requested reinstatement.

(e) Continuing education hours obtained as a prerequisite for reactivating either a retired or revoked license may not be counted toward the current licensure renewal year requirement.

(7) Waiver of continuing education.

(a) The Board may grant a waiver of attendance and completion of the required hours of continuing education, if it can be shown that the failure to comply was not attributable to the individual or was beyond the physical capabilities of the individual, e.g., disability, residence abroad, military service or other good cause. A request for waiver must be received by the Board on or before the license expiration date.

(b) Waiver requests will be considered only on an individual basis and may be made by submitting the following items to the Board:

1. A written request for a waiver which specifies what requirement is sought to be waived and an explanation of the reason(s) for the request, dated and signed by the licensee.

2. Any documentation which supports the reason(s) for the waiver requested or which may be subsequently requested.

(c) An approved waiver is effective only for the calendar year for which the waiver of the requirement is sought, unless otherwise specified in writing by the Board.

(8) Violations.

(a) Any licensee who falsely attests to attendance and completion of the hours of continuing education may be subject to disciplinary action pursuant to the provisions of these rules.

(b) Any licensee who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to the provisions of these rules.

(Rule 1200-30-01-.12, continued)

(c) Continuing education hours obtained as a result of compliance with the terms of enforcement action taken by the Board shall not be counted toward the continuing education hours required to be obtained in any renewal cycle.

(d) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(e) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(f) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (d) above may be subject to disciplinary action.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-24-605, and 68-24-606.* ***Administrative History:*** *Original rule filed May 25, 1994; effective August 9, 1994. Repeal and new rule filed January 30, 1997; effective May 30, 1997. Repeal and new rule filed December 28, 1999; effective March 12, 2000. Amendment filed September 13, 2001; effective November 27, 2001. Amendment filed August 19, 2002; November 2, 2002. Amendments filed October 18, 2004; effective January 1, 2005. Amendment filed November 2, 2005; effective January 16, 2006. Amendment filed May 18, 2007; effective August 1, 2007. Amendment filed July 3, 2007; effective September 16, 2007. Amendments filed August 5, 2011; effective November 3, 2011.*

1200-30-01-.13 PROFESSIONAL ETHICS.

(1) A licensed Alcohol and Drug Abuse Counselor and anyone under his supervision shall conduct his professional practice in conformity with the NAADAC Code of Ethics and these rules.

(2) Each applicant or license holder is responsible for being familiar with and following these standards.

(3) In the event an applicant, license holder, or other individual has a question regarding legal, ethical and professional standards, neither the Board nor its administrative personnel shall consider such questions unless presented with a proper petition for a declaratory order.

(4) A licensee must report any other licensee believed to be practicing in such a way as to indicate impairment, potential harm to clients, and/or to cause undue negative reflection or harm to his profession. Such reporting shall be made to the Department of Health, Division of Health Related Boards, Investigative Section.

(a) A licensee who is aware of unethical conduct or unprofessional modes of practice must report such inappropriate behavior, unless constrained by the need to protect patient confidentiality.

(b) A licensee shall cooperate with the Department's Investigative Section and promptly supply necessary information unless constrained by the need to protect patient confidentiality.

(c) In the event a supervisor suspects the person being supervised is guilty of unethical conduct, the supervisor shall adhere to the standards of the profession and shall report such conduct.

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* 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)
Richard Terry Kinnaman	X				
Sherry F. Butler	X				
Susan D. Cunningham	X				
Karen Dennis	X				
Major McNeil				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Alcohol and Drug Abuse Counselors (board/commission/ other authority) on 01/17/2014 (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: *11/08/2013 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/17/2014 (mm/dd/yy)*

Date: March 17, 2015

Signature: Caroline R. Tippens

Name of Officer: Caroline Tippens

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 3-17-15

Notary Public Signature: Suzanne M. Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 29, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/25/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Tennessee Board of Nursing
SUBJECT:	RN, LPN, Advanced Practice Nurses, and Fees for Registered Nurse First Assistants
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-1-132
EFFECTIVE DATES:	June 22, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Amendment 1000-01-.12: creates fees for registered nurse first assistants. Amendment1 000-01-.17: changes temporary licensure status from thirty days to ninety days. Amendment 1000-01-.20: creates certificate as a registered nurse first assistant. Amendment 1000-02-.16: changes temporary licensure status from thirty days to ninety days. Amendment 1000-04-.05: requires two hours of continuing education specifically address prescribing practices.

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, either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process 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 extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

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

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

(3) The establishment of flexible compliance and/or reporting requirements for small businesses. These rules do not create flexible compliance and/or reporting requirements for small businesses.

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

These rules do not involve schedules or deadlines for compliance or reporting requirements for small businesses.

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

These rules do not consolidate or simplify compliance reporting requirements for small businesses.

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

These rules do not establish performance, design, or operational standards.

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

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Nursing **Rulemaking hearing date:**

December 4, 2014

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   These rules will affect all Advance Practice Nurses holding Certificates of Fitness and their employers, all endorsement applicants holding multistate practice privileges, and all registered nurses wishing to practice as RNFAs. These individuals and businesses will bear the cost of and directly benefit from the proposed rules.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   These rules should have a minimal impact on reporting, recordkeeping and other administrative costs.

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

   Small businesses and consumers will be positively affected by the proposed rules.

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

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

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

   Federal: None.

   State: Currently, twenty-four states have adopted the Nurse Licensure Compact (NLC).

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

   These proposed rules do not provide for any exemptions of small businesses.

Impact on Local Governments

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

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

(7)

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For Department of State Use Only

Sequence Number: 03-16-15
Rule ID(s): 5893-5895
File Date: 3/24/15
Effective Date: 6/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Health
Division:	Tennessee Board of Nursing
Contact Person:	Mark S. Waters
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mark.S.Waters@tn.gov

Revision Type (check all that apply):

X Amendment
X 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**
1000-01	Rules and Regulations of Registered Nurses
Rule Number	**Rule Title**
1000-01-.12	Fees
1000-01-.17	Interstate Nurse Licensure

Chapter Number	**Chapter Title**
1000-02	Rules and Regulations of Licensed Practical Nurses
Rule Number	**Rule Title**
1000-02-.16	Interstate Nurse Licensure

Chapter Number	**Chapter Title**
1000-04	Advanced Practice Nurses and Certificates of Fitness to Prescribe
Rule Number	**Rule Title**
1000-04-.05	Renewal of Certificate and Demonstration of Competency

1000-01-.12 FEES.

(1) The Tennessee Board of Nursing hereby establishes fees as follows:

	Fee	Amount
(a)	R.N. Examination (R.N. applicants may also be required to pay a fee directly to the National Council of State Boards of Nursing.)	$ 90.00
(b)	R.N. Re-examination (R.N. applicants may also be required to pay a fee directly to the National Council of State Boards of Nursing.)	$100.00
(c)	R.N. Temporary Permit	$ 25.00
(d)	R.N. Endorsement	$105.00
(e)	R.N. Renewal	$ 90.00
(f)	R.N. Reinstatement	$100.00
(g)	R.N. Verification	$ 25.00
(h)	Biennial State Regulatory Fee (To be paid whenever an application for examination, re-examination, endorsement, renewal, or reinstatement is submitted.)	$ 10.00
(i)	Certificate of Fitness	$200.00
(j)	Registered Nurse First Assistant Certificate	$100.00
(k)	Registered Nurse First Assistant Certificate Renewal	$100.00
(l)	Registered Nurse First Assistant Certificate Reinstatement	$100.00
(mj)	Change of Name	$ 0.00

(nk) Subparagraphs (a), (b), (d), and (e) include a $15.00 fee to support impaired nurses.

(2) Fees paid to the Tennessee Board of Nursing are not refundable.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-7-105, 63-7-106, 63-7-114, 63-7-128, 63-7-207 and 63-7-207(4).*

1000-01-.17 INTERSTATE NURSE LICENSURE. Pursuant to the Interstate Nurse Licensure Compact, a license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state.

(1) Definitions. As used in this rule, the following terms shall have the following meanings ascribed to them:

(a) "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

(b) "Board" means party state's regulatory body responsible for issuing nurse licenses.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of state nurse licensing boards.

(d) "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Information System" means the coordinated licensure information system.

(g) "Interstate Nurse Licensure Compact" means the uniform legislation which is substantially similar to Tennessee's Public Chapter 538 of the Public Acts of 2002, which, when enacted into law by participating states, establishes multistate licensure privileges for registered nurses and licensed practical nurses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as a registered nurse in such party state.

(i) "Nurse" means a registered nurse as that term is defined by each party's state practice laws.

(j) "Party state" means any state that has adopted the Interstate Nurse Licensure Compact.

(k) "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(l) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

(m) "Remote state" means a party state, other than the home state:

1. Where the patient is located at the time nursing care is provided; or

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(2) Issuance of License by a Compact Party State – As of July 1, 2005, no applicant for initial licensure may be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable National Council Licensure Examination (NCLEX) or its predecessor examination used for licensure.

(a) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

1. Driver's license with a home address;

2. Voter registration card displaying a home address; or

3. Federal income tax return declaring the primary state of residence; or

4. Military Form No. 2058 – state of legal residence certificate; or

5. W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

(b) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(c) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(d) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(e) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety~~thirty~~ (9~~3~~0) days.

(f) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety~~thirty~~ (9~~3~~0) day period in subparagraph (e) shall be stayed until resolution of the pending investigation.

(g) The former home state license shall no longer be valid upon the issuance of a new home state license.

(h) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.

(3) Limitations on Multistate Licensure Privilege – Discipline

(a) Home state boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

(b) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

(4) Information System

(a) Levels of access

1. The public shall have access to nurse licensure information contained in the Information System limited to:

(i) The nurse's name,

(ii) Jurisdiction(s) of licensure,

(iii) License expiration date(s),

(iv) Licensure classification(s) and status(es),

(v) Public emergency and final disciplinary actions, as defined by contributing state authority; and

(vi) The status of multistate licensure privileges.

2. Non-party state boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

3. Party state boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority.

(b) The licensee may request in writing to the home state board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System.

(c) The Board shall report to the Information System within ten (10) business days:

1. Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority)

2. Dismissal of complaint, and

3. Changes in status of disciplinary action, or licensure encumbrance.

(d) Current significant investigative information shall be deleted from the Information System within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(e) Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a board.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-7-104, 63-7-105, 63-7-113, 63-7-115, 63-7-207, and 63-7-301 et seq.* ***Administrative History:*** *Original rule filed April 4, 2003; effective June 18, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Repeal and new rule filed August 5, 2011; effective November 3, 2011.*

1000-01-.20 REGISTERED NURSE FIRST ASSISTANT CERTIFICATE. To be issued a certificate as a registered nurse first assistant with privileges to hold oneself out as a registered nurse first assistant or use the abbreviation RNFA, the applicant must meet all of the following requirements:

(1) A current, unencumbered license as a registered nurse under T.C.A. Title 63, Chapter 7, or current unencumbered licensure as a registered nurse with the multistate licensure privilege to practice in Tennessee;

(2) A current certification in perioperative nursing;

(3) Successful completion of a registered nurse first assistant education program that meets the education standard of the Association of Perioperative Registered Nurses for a registered nurse first assistant;

(4) Payment of the applicable fee;

(5) Completion of the appropriate application signed under penalty of perjury.

Authority: *T.C.A. §§63-7-128, 63-7-207, and 63-7-302.*

(Rule 1000-02-.15, continued)

1000-02-.16 INTERSTATE NURSE LICENSURE. Pursuant to the Interstate Nurse Licensure Compact, a license to practice practical nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a practical nurse in such party state.

(1) Definitions. As used in this rule, the following terms shall have the following meanings ascribed to them:

(a) "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

(b) "Board" means party state's regulatory body responsible for issuing nurse licenses.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of state nurse licensing boards.

(d) "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Information System" means the coordinated licensure information system.

(g) "Interstate Nurse Licensure Compact" means the uniform legislation which is substantially similar to Tennessee's Public Chapter 538 of the Public Acts of 2002, which, when enacted into law by participating states, establishes multistate licensure privileges for registered nurses and licensed practical nurses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as a practical nurse in such party state.

(i) "Nurse" means a practical nurse as that term is defined by each party's state practice laws.

(j) "Party state" means any state that has adopted the Interstate Nurse Licensure Compact.

(k) "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(l) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

(m) "Remote state" means a party state, other than the home state:

1. Where the patient is located at the time nursing care is provided; or

(Rule 1000-02-.15, continued)

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(2) Issuance of License by a Compact Party State – As of July 1, 2005, no applicant for initial licensure may be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable National Council Licensure Examination (NCLEX) or its predecessor examination used for licensure.

(a) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

1. Driver's license with a home address;

2. Voter registration card displaying a home address; or

3. Federal income tax return declaring the primary state of residence; or

4. Military Form No. 2058 – state of legal residence certificate; or

5. W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

(b) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(c) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(d) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(e) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety~~thir~~ty (9~~3~~0) days.

(f) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety~~thirty~~ (9~~3~~0) day period in subparagraph (e) shall be stayed until resolution of the pending investigation.

(g) The former home state license shall no longer be valid upon the issuance of a new home state license.

(h) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.

(3) Limitations on Multistate Licensure Privilege – Discipline

(Rule 1000-02-.15, continued)

(a) Home state boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

(b) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

(4) Information System

(a) Levels of access

1. The public shall have access to nurse licensure information contained in the Information System limited to:

(i) The nurse's name,

(ii) Jurisdiction(s) of licensure,

(iii) License expiration date(s),

(iv) Licensure classification(s) and status(es),

(v) Public emergency and final disciplinary actions, as defined by contributing state authority; and

(vi) The status of multistate licensure privileges.

2. Non-party state boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

3. Party state boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority.

(b) The licensee may request in writing to the home state board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System.

(c) The Board shall report to the Information System within ten (10) business days:

1. Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority)

2. Dismissal of complaint, and

(Rule 1000-02-.15, continued)

3. Changes in status of disciplinary action, or licensure encumbrance.

(d) Current significant investigative information shall be deleted from the Information System within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(e) Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a board.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-7-104, 63-7-105, 63-7-113, 63-7-115, 63-7-207, and 63-7-301 et seq.* ***Administrative History:*** *Original rule filed April 4, 2003; effective June 18, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Repeal and new rule filed August 5, 2011; effective November 3, 2011.*

1000-04-.05 RENEWAL OF CERTIFICATE AND DEMONSTRATION OF COMPETENCY. All advanced practice nurses who hold a Tennessee registered nurse license must biennially renew their Tennessee registered nurse license pursuant to Rule 1000-01-.03 and must demonstrate competency as a registered nurse pursuant to Rule 1000-01-.14. Additionally, to demonstrate competency to hold and/or renew an Advanced Practice Nurse Certificate, an advanced practice nurse shall:

(1) have initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to the nurse's specialty area; and

(2) if in possession of a Certificate of Fitness pursuant to Rule 1000-04-.04, have successfully completed a minimum of two ~~one~~ (2~~1~~) contact hours of continuing education ~~course~~ designed specifically to address controlled substance prescribing practices ~~and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as the term advanced practice nurse is defined in T.C.A. § 63-7-126(a)~~. The continuing education must include instruction in the Tennessee Department of Health's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol, and may include such other topics as medicine addiction and risk management tools.

Authority: *T.C.A. §§ §§ 63-7-114, 63-7-123, 63-7-126, and 63-7-207.* ***Administrative History:*** *Original rule filed October 26, 1999; effective January 9, 2000. Repeal filed March 9, 2001; effective May 23, 2001. New rule filed May 28, 2004; effective August 11, 2004. Repeal filed December 16, 2005; effective March 1, 2006. Amendment filed December 20, 2012; effective March 20, 2013.*

* 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)
Brent Earwood	X				
Lisa A Heaton	X				
Mark Allen Young	X				
Martha M. Buckner	X				
Leslie Nelson Akins	X				
Lee Ann Stearnes	X				
Kathleen Harkey	X				
Marietha O. Silvers	X				
Juanita Turnipseed	X				
Arthur L. Thompson	X				
Janell Rae Cecil	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Nursing (board/commission/ other authority) on 12/04/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/03/14 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 12/04/14 (mm/dd/yy)

Date: 12/9/2014

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 12-9-14

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/24/15

Effective on: 6/22/15

Tre Hargett
Secretary of State

SECRETARY OF STATE
RECEIVED
2015 MAR 24 PM 4:13

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Policy, Planning, and Assessment
SUBJECT:	Vital Records -- Fees for Copies of Records
STATUTORY AUTHORITY:	T.C.A. §§ 24-7-113, 68-3-103, 68-3-205, 68-3-206, 68-3-207, and 68-3-514
EFFECTIVE DATES:	June 28, 2015 through June 30, 2016
FISCAL IMPACT:	These rule amendments could result in a slight increase in state revenue as the fees for all certificates have increased from eight dollars ($8.00) to ten dollars (10.00).
STAFF RULE ABSTRACT:	The proposed changes omit the variation in costs for certain searches and issuance of certified (or uncertified) copies of records or abstracts, ranging from five dollars ($5.00) to fifteen dollars ($15.00) to a uniform fee of fifteen dollars ($15) for all such copies or searches.

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, either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process 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 extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

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

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

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

These rules do not affect compliance or reporting requirements for small businesses.

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

These rules do not affect schedules or reporting requirements for small businesses.

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

These rules do not consolidate or simplify compliance or reporting requirements for small businesses.

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

These rules do not establish performance standards for small businesses.

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

These rules do not stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health Policy Planning and Assessment, Division of Vital Records.

Rulemaking hearing date: March 11, 2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   These rules affect all persons and departments accessing vital records.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   These rules amendments do not contain any new reporting, recordkeeping, or other administrative costs required for compliance with the proposed rule amendments.

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

   Small business will be unaffected by the proposed rule amendments, consumers will be largely unaffected.

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

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule amendments.

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

   Federal: None.

   State: Texas charges $22.00 per birth certificate
   Kansas charges $15.00 per birth certificate
   North Carolina charges $24 for an original and $15.00 per copy of birth certificate
   Iowa charges $15.00 per birth certificate
   Maryland charges $24.00 per birth certificate
   Pennsylvania charges $20.00 per birth certificate
   West Virginia charges $12.00 per birth certificate

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

   These rule amendments do not contain any exemptions for small businesses.

Impact on Local Governments

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

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

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

For Department of State Use Only

Sequence Number: 03-31-15
Rule ID(s): 5921
File Date: 3/30/15
Effective Date: 6/28/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Health
Division:	Policy Planning and Assessment Division, Office of Vital Records
Contact Person:	Mary Kennedy
Address:	710 James Robertson Parkway, 5th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 253-4878
Email:	Mary.Kennedy@tn.gov

Revision Type (check all that apply):

X 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**
1200-07-01	Vital Records
Rule Number	**Rule Title**
1200-07-01-.13	Fees for Copies and Searches

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
POLICY PLANNING AND ASSESSMENT
DIVISION OF VITAL RECORDS

CHAPTER 1200-07-01
VITAL RECORDS

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1200-07-01-.01 DUTIES OF STATE REGISTRAR.

(1) Forms. All forms, certificates, and reports used in the system of vital records are the property of the Department of Public Health and shall be surrendered to the State Registrar of Vital Records hereinafter referred to as "State Registrar" upon demand. The forms prescribed and distributed by the State Registrar for reporting vital events shall be used only for official purposes. No forms shall be used in the reporting of vital events or making copies thereof except those furnished or approved by the State Registrar.

(2) Requirements for Preparation of Certificates. All certificates and records relating to vital events must be prepared on a typewriter with a black ribbon. All signatures required shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:

(a) That does not have the certifier's name typed or printed legibly under his signature;

(b) That does not supply all items of information called for thereon or satisfactorily account for their omission;

(c) That contains alterations or erasures;

(d) That does not contain handwritten signatures as required;

(e) That is marked "copy" or "duplicate,"

(f) That is a carbon copy;

(g) That is prepared on an improper form;

(h) That contains improper or inconsistent data;

(i) That contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

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

(j) That is not prepared in conformity with regulations or instructions issued by the State Registrar.

(3) Designation of Additional Offices.

(a) The State Registrar shall determine whether offices other than the Division of Vital Records are needed in this State to aid in the efficient administration of the system of vital records. Such determination shall be based on the most efficient method by which the needs of the people of this State can be met.

(b) If the State Registrar determines additional offices are necessary, such offices shall be designated with the approval of the Department. The duties and responsibilities may be assigned to currently existing offices or special branch offices of the Division of Vital Records may be established in those areas where they are deemed necessary, or a combination of existing offices and branch offices may be used. In all cases where existing offices are utilized, the employees of such offices shall be deemed to be employees of the Division of Vital Records and subject to the control of the State Registrar when they are performing functions relating to the system of Vital Records.

(c) The State Registrar shall delegate such duties and responsibilities to such offices as he deems necessary to insure the efficient operation of the system of vital records. These may include any or all of the following:

1. The receipt and processing of birth, death and fetal death records. This would include the receipt of these records from the person responsible for filing the record, checking them for accuracy and completeness, and forwarding them to the Division of Vital Records at intervals prescribed by the State Registrar.

2. Issuance of certified copies of birth and/or death records. The records from which the certified copies are issued shall be provided by the Division of Vital Records. All forms and procedures used to issue the copies shall be provided or approved by the State Registrar. If it is deemed appropriate and feasible, any such office may be authorized and provided copies of all birth and/or death records filed in this State.

3. Act as the agent of the State Registrar in their area and provide assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital records.

(d) The State Registrar shall determine the responsibilities and duties of each office independently.

Authority: *T.C.A. §§53-404 and 53-444.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed April 16, 1981; effective June 1, 1981.*

1200-07-01-.02 INFANTS OF UNKNOWN PARENTAGE; FOUNDLING REGISTRATION.

(1) (a) The report for an infant of unknown parentage shall be registered on a Birth Report of Foundling form and shall:

1. Show the required facts as determined by approximation.

2. Show the signature and title of the custodian in lieu of the attendant.

(Rule 1200-07-01-.02, continued)

3. If a "Birth Report of Foundling" is not registered within one year of the date found, the report of foundling may be filed by order of a court in the county where the foundling was located, or in the county where the institution having custody is located.

(b) When a report has been sealed as provided by Chapter 4 of Title 53, T.C.A., the State Registrar may inspect such information for purposes of properly administering the vital records program.

Authority: *T.C.A. §§53-404 and 53-444.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978.*

1200-07-01-.03 DELAYED REGISTRATION OF BIRTH.

(1) Registration - Ten days to one year.

(a) Certificates of birth filed after ten days, but within six months from the date of birth, shall be registered on the standard form of live birth certificate in the manner prescribed in Section 6 of the Vital Records Act. Such certificate shall not be marked "Delayed."

(b) Certificates of birth filed after six months, but within one year from date of birth, shall be registered on the standard form of live birth certificate in the manner prescribed in T.C.A. §§68-3-301 through 68-3-306. Such certificates shall be marked "delayed" on the face of the certificate.

(c) In any case where the certificate is signed by someone other than the attendant or person in charge of the institution where birth occurred, a notarized statement setting forth the reason therefore must be attached to the certificate. The State Registrar may require additional evidence in support of the facts of birth and/or an explanation of why the certificate of birth was not filed within the required ten days.

(2) Delayed Certificate of Birth Form. All certificates registered one year or more after the date of birth are to be registered on a delayed certificate of birth form prescribed by the State Registrar.

(3) Who May Request the Registration of and Sign a Delayed Certificate of Birth.

(a) Any person born in this State whose birth is not recorded in this State, or his parent, guardian, next of kin, and having personal knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to these regulations and instructions issued by the State Registrar.

(b) Each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is at least 12 years old and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the certificate shall be signed and sworn to by one of the following in the indicated order of priority.

1. One of the parents of the registrant, or

2. The guardian of the registrant, or

3. The next of kin of the registrant.

(4) Facts to be Established for a Delayed Registration of Birth.

(Rule 1200-07-01-.03, continued)

(a) The minimum facts which must be established by documentary evidence shall be the following:

1. The full name of the person at the time of birth;

2. The date of birth and place of birth;

3. The full name of the mother;

4. The full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in Regulation 3.5.

(5) Delayed Registration Following a Legal Change of Status.

(a) When evidence is presented reflecting a legal change of status by adoption, legitimation, paternity determination or acknowledgment, A new certificate of birth may be prepared on a form in current use to reflect such change.

(b) The existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital records program.

(6) Documentary Evidence - Requirements.

(a) To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed certificate of birth shall be supported by at least:

1. an affidavit of a parent or the attendant at birth and one piece of documentary evidence establishing the facts of birth, or

2. an affidavit of two persons, at least one of whom is not related to the registrant by blood or marriage, and one piece of documentary evidence establishing the facts of birth, or

3. two pieces of documentary evidence which establish the facts of birth.

(b) Facts of parentage shall be supported by at least one document which may be one of the documents above other than an affidavit of personal knowledge.

(7) Documentary Evidence - Acceptability.

(a) The State Registrar may establish a priority of best evidence.

(b) Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document.

(c) All documents submitted in evidence, other than an affidavit of personal knowledge, must have been established at least five years prior to the date of application or have been established prior to the applicant's tenth birthday.

(d) An affidavit of personal knowledge, to be acceptable, must be prepared by one of the parents, the next of kin, or any older person and must be signed before an official

(Rule 1200-07-01-.03, continued)

authorized to administer oaths. In all cases, the affiant must be at least ten years older than the applicant and have personal knowledge of the facts of birth.

(8) Abstraction of Documentary Evidence.

(a) The State Registrar, or any Local Registrar shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

1. The title or description of the document;

2. The name and address of the affiant, if the document is an affidavit of personal knowledge or of the custodian, if the document is an original or certified copy of a record or a signed statement;

3. The date of the original filing of the document being abstracted;

4. The information regarding the birth facts contained in the document.

(b) All documents submitted in support of the delayed birth registration shall be returned to the applicant after review and abstraction.

(9) Certification by the State Registrar.

(a) The State Registrar, or any Local Registrar, shall, by his signature, certify:

1. That no prior birth certificate is on file for the person whose birth is to be recorded;

2. That he has reviewed the evidence submitted to establish the facts of birth;

3. That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

(10) Dismissal After One Year. Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall advise the applicant of his decision and all documents submitted in support of such registration shall be returned to the applicant.

Authority: *T.C.A. §§4-5-202, 63-3-103, and 68-3-308.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendments filed March 27, 1989; effective May 11, 1989. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.04 NEW CERTIFICATES OF BIRTH FOLLOWING ADOPTION, LEGITIMATION, PATERNITY DETERMINATION AND PATERNITY ACKNOWLEDGMENT.

(1) Adoption. A new certificate of birth shall be prepared by the State Registrar for a child born in Tennessee, if a certificate in the name at birth is on file and upon receipt of

(a) a certified Certificate of Adoption or

(b) a certified copy of an adoption decree and a completed application for a New Certificate of Birth by Adoption on a form prescribed or approved by the State Registrar.

(Rule 1200-07-01-.04, continued)

(2) If the court that granted the adoption, the adopting parent(s), or the adopted person requests that a new certificate is not to be prepared, then a new certificate shall not be prepared. For a child born in another state and adopted in a court of record in Tennessee, the adoption papers shall be forwarded to the state of birth.

(3) The clerk of the court of competent jurisdiction shall notify the State Registrar of each revocation of adoption. Upon receiving a certified copy of the court order revoking or annulling the adoption and if a new birth certificate based on adoption has been prepared, the new certificate will be removed and placed in a sealed file with other documents related to the adoption and the revocation or annulment. The birth certificate for the registrant prior to the adoption will be reinstated in the active files.

(4) Legitimation by Subsequent Marriage of the Parents. A new certificate of birth shall be prepared by the State Registrar for a child born in Tennessee, if a certificate in the name at birth is on file and upon receipt of

(a) an Application for a New Certificate of Birth by Subsequent Marriage of Parents, including affidavits of the mother and father;

(b) information for locating the original birth certificate and for preparing the new birth certificate on a form prescribed by the State Registrar; and

(c) a certified copy of the parents' marriage certificate or information for locating the parents' marriage certificate, if the certificate is filed in the Division of Vital Records.

(5) If either parent is deceased or unavailable to provide the affidavit required in (a), the State Registrar may accept a copy of an order, judgment, or decree whereby a court determined the husband to be the father of the child.

(6) However, if the husband is already shown as father on the child's birth certificate, a new certificate will not be prepared. If another man is shown as father of the child on the child's birth certificate, a new certificate may be prepared only when a certified copy of a court order specifically refuting the man listed as father or other indisputable legal evidence is provided to the State Registrar.

(7) Court Determination Parentage. A new certificate of birth shall be prepared by the State Registrar for a child born in Tennessee whose natural parents have never married if a certificate in the name at birth is on file and upon receipt of the following:

(a) a court order of parentage, regardless of whether the order was entered before or after the birth of the child, and

(b) a completed Application for a New Birth Certificate.

(8) However, a new birth certificate will not be prepared if the man determined to be the father is already shown as the father on the child's birth certificate.

(9) If an order of parentage is abrogated by a later judgment or order of the same or higher court, the clerk of the court which entered such order shall notify the State Registrar in writing. If a new birth certificate has been prepared, that certificate will be removed and placed in a sealed file with other information relating to the order of parentage, and the previous birth certificate will be reinstated in the active files.

(10) New Certificate. The new certificate of birth shall be on a form prescribed by the State Registrar and shall include the following items necessary to complete the certificate:

(Rule 1200-07-01-.04, continued)

(a) the full name of the child;

(b) the date and place of birth, sex, and date of filing as shown on the original or delayed certificate in the name at birth;

(c) the names and personal information of the parent(s); and

(d) the signature of the State Registrar in the space provided for the signature of the certifier of the birth.

(11) Report of Foreign Birth. A Report of Foreign Birth shall be prepared on a form prescribed by the State Registrar upon receipt of a certified copy of the final order of adoption and an Application for Report of Foreign Birth for Adopted Child. The Report shall include the following items:

(a) full adoptive name of the child;

(b) actual date and place of birth and sex of the child as provided by the Clerk of the Court;

(c) full names of the adoptive parents and their legal residence at the time the adoption was granted;

(d) date of filing of the Report;

(e) signature of the State Registrar; and

(f) statement that the Report is not evidence of United States citizenship.

(12) Sealing of documents. After preparation of a new certificate of birth or report of foreign birth, the certificate in the name at birth and/or the legal documents upon which the new certificate or report was prepared are to be placed in an envelope and sealed. Such sealed file may be opened by the State Registrar for the issuance of a copy of the certificate in the name at birth only upon order of a court of competent jurisdiction or upon receipt of a directive from the Tennessee Department of Children's Services.

Authority: *T.C.A. §§4-5-202, 36-1-120, 36-1-126, 36-1-127, 36-1-130, 36-1-138, 68-3-103, 68-3-310, 68-3-311, 68-3-312, and 68-3-313.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendments filed March 27, 1989; effective May 11, 1989. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.05 DEATH REGISTRATION, INCOMPLETE.

(1) If all information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director or person acting as such shall file the certificate with all information that is available and satisfactorily account for all the items that are omitted. In all cases, the medical certification must be provided by the person responsible for such certification. If the cause of death is unknown or pending investigation, the cause of death shall be shown as such on the certificate. A supplemental report providing the personal information omitted from the original certificate shall be filed by the funeral director or person acting as such with the State Registrar as soon as possible, but in all cases within 30 days of the date the death occurred.

(2) The physician signing the medical certification of the certificate or the medical examiner who has assumed responsibility for the case shall report the cause of death on a form provided by the State Registrar as soon as possible, but in all cases within 6 months of the date the death occurred.

(Rule 1200-07-01-.05, continued)

Authority: *T.C.A. §§4-5-202, 68-3-103, and 68-3-502.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.06 DELAYED REGISTRATION OF DEATH.

(1) The registration of a death after the time prescribed by statute and regulations shall be registered on the standard certificate of death form in the manner prescribed below:

(a) If the attending physician or medical examiner at the time of death and the attending funeral director or person who acted as such are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the State Registrar. However, for those certificates filed one year or more after the date of death, the physician or medical examiner and the funeral director or person who acted as such must state in accompanying affidavits that the information on the certificate is based on records kept in their files.

(b) In the absence of the attending physician or medical examiner, and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by:

1. An affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate;

2. Two documents which identify the deceased and his date and place of death.

(2) In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

(3) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

Authority: *T.C.A. §§53-404 and 53-444.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978.*

1200-07-01-.07 REPORTS OF FETAL DEATH AND INDUCED TERMINATION OF PREGNANCY.

(1) Reports of induced termination of pregnancy are statistical reports only and are not to be incorporated into the official records of the Division of Vital Records. The reports are to be forwarded directly to the Department of Health within ten (10) days after the procedure by the person in charge of the institution in which the procedure was performed or by the physician in attendance, if the induced termination did not occur in an institution. The State Registrar is authorized to dispose of such reports when all statistical processing of the reports has been accomplished. However, the State Registrar may establish an electronic file of such records, so that they will be available for future statistical and research projects; provided, however, such file shall not be made a part of the official records and the reports shall not be made available for the issuance of certified copies. Such file shall be retained for as long as the State Registrar deems necessary and it shall then be destroyed consistent with laws and rules pertaining to record retention.

(2) A report of fetal death shall be submitted for each fetal death of a fetus weighing three hundred fifty (350) grams or more or for each fetal death of twenty (20) completed weeks gestation or more. The State Registrar shall not maintain any report of fetal death for a fetus weighing less than three hundred fifty (350) grams or, if weight is not reported, that shows less than twenty (20) completed weeks of gestation.

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

(3) The report of fetal death is to be submitted within ten (10) days after delivery to the State Registrar by the person in charge of the institution in which the fetus was delivered; or by the physician in attendance, if the fetal death did not occur in an institution; or by the appropriate medical examiner, if the fetal death occurred without medical attendance.

(4) Except as noted in 1200-07-01-.07(3), reports of fetal death are not copied, issued, or otherwise released, except for statistical or research purposes approved by the State Registrar.

Authority: *T.C.A. §§4-5-202, 68-3-103, 68-3-504, and 68-3-505.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 6, 2002; effective October 20, 2002. Emergency rule filed July 26, 2010; effective through January 22, 2011. Emergency rule filed July 26, 2010; expired effective January 23, 2011; rule reverted to its prior status. Amendments filed November 10, 2010; effective February 8, 2011.*

1200-07-01-.08 AUTHORIZATION FOR FINAL DISPOSITION.

(1) Removal of Body.

(a) Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

1. Obtain assurance from the attending physician that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death and receive permission to remove the body from the place of death; or

2. Notify the medical examiner if the case comes within his jurisdiction and receive authorization from him to remove the body;

(b) The funeral director or person acting as such shall secure and file a death certificate with the local registrar within five (5) days.

(2) Disinterment Permits.

(a) A disinterment permit shall be issued by the State Registrar or Local Registrar upon receipt of a written affidavit signed by the next of kin and the person who is in charge of the disinterment or upon receipt of an order of a court of competent jurisdiction directing such disinterment.

(b) Upon receipt of a court order or signed affidavit of the next of kin the State Registrar may issue one permit to authorize disinterment and reinterment of all remains in a mass disinterment provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified. The disinterment permit shall be authorization for disentombment, disinterment, transportation and reentombment or reinterment.

(c) A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

Authority: *T.C.A. §§4-5-202, 53-404, 53-444, 68-3-103, 68-3-502 and 68-3-507.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 17, 1978; effective February 17, 1978. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.09 DELAYED REGISTRATION OF MARRIAGE.

(1) The registration of a marriage after the time prescribed by statute shall be made on the standard certificate of marriage form in the manner prescribed below:

(a) The certificate must be filed with the County Court Clerk where the marriage license was originally issued;

(b) To be acceptable for registration by the State Registrar the delayed certificate of marriage must be supported by:

1. A copy of the license or of the application for license if the license was granted.

2. A signed statement from the officiant or the custodian of the official record and from one witness to the wedding ceremony proving that there was a marriage and the date and place of the marriage.

(2) In all cases, the State Registrar may require additional documentary evidence to prove the facts of marriage.

Authority: *T.C.A. §§53-404 and 53-444.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 17, 1978; effective February 17, 1978.*

1200-07-01-.10 AMENDMENT OF VITAL RECORDS.

(1) Amendment of Minor Errors on Certificates During the First Year.

(a) Amendment of obvious errors, transposition of letters in words of common knowledge, or the addition of omitted information may be made by the State Registrar within the first year after the date of the event either upon his own observation or query or upon request of the person defined in 1200-07-01-.10(3). When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information together with the date the change was made shall be maintained in such a way as not to become a part of any certification issued. The certificate is not to be marked "Amended".

(b) The State Registrar may at his discretion accept an affidavit only to correct inaccurate information recorded on a certificate within the first year after the date of the event. The affidavit must be signed and sworn to by the individual, institutional representative, clerk or funeral director who originally provided the information for the certificate or prepared the certificate. If the requested correction compromises the integrity of the record, the State Registrar may require supporting documentation or a court order to amend the certificate. The certificate will be marked "Amended".

(2) All Other Amendments.

(a) Unless otherwise provided in these rules or by statute, all other amendments to vital records shall be supported by:

1. an affidavit signed by one of the persons defined in 1200-07-01-.10(3) setting forth the information to identify the certificate, the incorrect data as it is listed on the certificate, and the correct data as it should appear; and

2. one or more items of documentary evidence which support the alleged facts and which were created at least five years prior to the date of the application for

(Rule 1200-07-01-.10, continued)

amendment or within seven years of the date of the event, i.e., birth, death, marriage or divorce related to the record.

3. The date of birth on a birth certificate cannot be changed to a date which is after the date of filing. The date of birth can be corrected by an affidavit required in (2) (a) (1) and either of the following:

   (i) one item of documentary evidence which was created before the registrant's tenth birthday which supports the correct date of birth, or

   (ii) a transcript of the Federal Census which next followed the registrant's birth to establish the year of birth and a document which was made prior to the registrant's twenty-first birthday which supports the correct date of birth, or

   (iii) to amend only a day of birth (with month and year to remain as originally recorded) documentary evidence established before the registrant's twenty-first birthday that supports the correct date of birth.

4. To amend the records for births that occurred more than seventy years prior to the application, the State Registrar may at his discretion require documentary evidence only. The documents must be at least five years old at the time of amendment.

5. Any item on a certificate may be corrected by an order of a court of record with the exception of the date of filing, the signature of the certifier, and changing the date of birth to a date which is after the date of filing. A certified copy of the order must be submitted to the State Registrar.

6. An item that was established by court order on a certificate can only be amended by an order of a court of competent jurisdiction, preferably the court which granted the original decree. A certified copy of the order signed by the clerk of the court must be submitted to the State Registrar.

7. A legal change of name order from a court of competent jurisdiction is required to change the name as shown on the certificate, unless the registrant presents documentary evidence that the name was incorrectly recorded at the time of registration of birth. In order to prove incorrect recording, the documentary evidence should be the oldest document available, preferably a hospital birth worksheet or other record created very soon after birth, that proves the correct name.

8. A certified copy of a court order from a court of competent jurisdiction will be required to amend any items on the birth certificate that were based upon a Voluntary Acknowledgment of Paternity signed and sworn to by the parents.

(b) The State Registrar shall evaluate the evidence submitted in support of any amendment and, when he finds reason to doubt its validity or adequacy, he may reject the amendment and in writing shall advise the applicant of the reasons for this action.

(3) Who May Apply.

(a) To amend a birth certificate, application may be made by one of the parents named on the birth certificate, the guardian, the registrant (if 18 years of age or older), or the individual or institution responsible for filing the certificate.

(Rule 1200-07-01-.10, continued)

(b) To amend a death certificate, application may be made by the next of kin, the informant listed on the death certificate, or the funeral director or person acting as such who submitted the death certificate. Applications to amend the date of death or the medical certification of cause of death shall be made by the physician who signed the medical certification or the medical examiner.

(c) Applications for amendment of a certificate of marriage shall be made jointly by both parties to the marriage or by the survivor. In the event the marriage to which the application relates was terminated by divorce or annulment on or before the date of application for amendment, the applicant may request amendment only of those items on the certificate of marriage which relate to the applicant.

(d) Applicants for amendment of matters contained in a certificate of divorce or annulment which are not part of the decree may be made by either party to the marriage so terminated. Applications for amendment of matters contained in a certificate of divorce or annulment which are part of the decree may only be made by the court which ordered the divorce or annulment upon which the report was made.

(4) Amendment of Registrant's Given Name on Birth Certificates Within the First Year.

(a) Until the registrant's first birthday, given names may be amended upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

(b) After one year from the date of birth, the provisions of Rule 1200-07-01-.10(2) must be followed to amend a given name, if the name was entered incorrectly on the birth certificate. A legal change of name order must be submitted from a court of competent jurisdiction to change a given name after one year and the order must be certified.

(5) Addition of Given Name.

(a) Given names, for a child whose birth was recorded without a given name, may be added to the certificate upon affidavit of the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

(b) If a birth was recorded without a given name and the registrant is age 18 years or older, he may sign the affidavit to add given names only when supported by documentary evidence at least five years old which establishes the name.

(6) Addition of Father's Name to Birth Certificate.

(a) A birth certificate may be amended to show the father's name and personal information in a case in which the parents were married at the time of their child's birth, if the father's name was omitted from the birth certificate or another man was shown as the father on the birth certificate.

1. If another man is listed on the birth certificate as the father, a certified copy of a court order specifically refuting the man listed as father must be submitted to the State Registrar before the certificate can be amended to show the correct information. The original entries concerning the father will be blocked. If the child's surname is to be changed, the original entry will be blocked.

2. The father's name and personal information may be added, if those items on the original certificate are blank, upon submission of the following to the State Registrar:

(Rule 1200-07-01-.10, continued)

(i) an affidavit of both natural parents attesting to the fact that the man is the natural father and stating the surname to be given to the child, and

(ii) a certified copy of the marriage certificate of the father and mother showing that the marriage occurred before the child's birth, or information for locating the marriage certificate if the certificate is filed in the Division of Vital Records.

(iii) The State Registrar shall evaluate the evidence and affidavits submitted in support of this amendment, and, when he finds reason to doubt its validity or adequacy, he may reject the amendment and shall advise the applicant in writing of the reasons for this action.

(iv) In all cases the fact of amendment will be noted on the certificate and on all certified copies issued.

(b) In cases in which the mother was not married at the time of the child's birth and no information about the father is shown on the child's birth certificate, the father's name and personal information may be entered on the birth certificate, if prior to the child's nineteenth birthday both natural parents submit a voluntary acknowledgment of paternity form attesting to the fact that the man is the natural father and stating the surname to be given to the child.

1. If the parents elect to change the child's surname, the original surname will be blocked.

2. The record will be marked as amended, but certified copies will not bear the amendment notation.

(7) Removal of Father's Name and Personal Information. The originally shown father's name and personal data may be removed from a birth certificate only upon receipt of either

(a) a properly completed Rescission of Voluntary Acknowledgment of Paternity received by the State Registrar within 60 days of the date on which the Voluntary Acknowledgment of Paternity was completed, or

(b) a certified copy of an order from a court of competent jurisdiction which determines that the named man is not the father.

(8) All information concerning the originally named father will be obliterated from the birth certificate. If a Rescission of Voluntary Acknowledgment of Paternity is accepted to make the amendment, the child's surname will be changed to the mother's legal surname at the time of birth. If a court order to remove the father is received, the child's name will be changed only if so ordered by the court.

(9) Medical Items. All items in the medical certification or of a medical nature may be amended only upon receipt of an affidavit from those persons responsible for the completion of such items or the medical examiner. The State Registrar may require documentary evidence to substantiate the requested amendment.

(10) Amendment of the Same Item More than Once. Once an amendment of an item is made on a vital record, that item shall not be amended again, except upon receipt of an order from a court of competent jurisdiction, and the order must be certified.

(11) Methods of Amending Certificates.

(Rule 1200-07-01-.10, continued)

(a) Certificates of birth, death, marriage, and divorce or annulment may be amended by the State Registrar in the following manner upon receipt of the required documentation:

1. completing the item in any case where the item was left blank on the existing certificate or

2. drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry must not obliterate such entry. The original entry will be blocked out only if the court so orders or blocking is required by statute.

(b) In all cases, there shall be inserted on or filed with the certificate a statement identifying the affidavit and documentary evidence used as proof of the correct facts and the date the amendment was made. As required by statute or rule, the certificate shall be marked "Amended".

(12) Old Records That Will Not Be Amended. When one hundred years have elapsed after the date of birth or fifty years have elapsed after the date of death, marriage or divorce, the record of the event will not be amended.

Authority: *T.C.A. §§4-5-202, 24-7-118, 68-3-101, 68-3-102, 68-3-103, 68-3-202, 68-3-203, 68-3-301, 68-3-302, 68-3-303, 68-3-304, 68-3-305, 68-3-308, 68-3-309, 68-3-310, 68-3-311, 68-3-312, 68-3-401, 68-3-402, 68-3-501, and 68-3-502.* ***Administrative History:*** *Original rule filed June 7, 1974. Repeal and new rule filed January 18, 1989; effective February 17, 1978. Amendment filed March 27, 1989; effective May 11, 1989. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.11 DISCLOSURE OF RECORDS.

(1) Vital records are public records and information from a record may be provided and verified upon request except that

(a) Information from the "Information for Medical and Health Use Only" section of the birth certificate and information from the "Confidential Information" section of the certificate of marriage or the certificate of divorce or annulment may not be provided except for statistical or research purposes.

(b) Information concerning the cause of death from the death certificate may be provided only to the spouse, children, parents, or other next of kin of the decedent or their respective authorized representative or for one of the following reasons:

1. when a documented need for the cause of death to establish a legal right or claim has been demonstrated;

2. when the request for the information is made by or on behalf of an organization that provides benefits to the decedent's survivors or beneficiaries;

3. when needed for research purposes approved by the State Registrar;

4. when requested by local, state or federal agencies for research or administrative purposes approved by the State Registrar; or

5. upon the order of a court of competent jurisdiction ordering such release.

(c) Information from birth records which have been sealed pursuant to T.C.A. 68-3-313 will not be verified. The sealed records are subject to opening only pursuant to T.C.A. 68-3-313, 36-1-126, 36-1-127 and 36-1-138.

(Rule 1200-07-01-.11, continued)

(d) To be consistent with the purpose of protecting persons in the federal witness protection program, verified information concerning such person will not be provided to anyone other then the subject person or that person's supervising federal marshal.

(e) In order to protect the personal, identifying information of children who are adopted or legitimated within the first year after birth, requests for listings or copies of the database of birth records that are not for research purposes and are received from non-governmental agencies will not be filled until eighteen (18) months past the end of the calendar year in which the birth occurred.

(2) To maintain the physical security of the documents, the records in the custody of the State Registrar or Local Registrars are not available for hands-on public inspection.

(3) A search for the record will be conducted when the applicant provides sufficient information to locate the record in question, including, but not limited to, the year of the event; for births, the name of the registrant or the father, if named on the record, or the mother, if the father is not named on the record; for deaths, the name of the decedent; for marriages, the name of the groom; and for divorces, the name of the husband.

(4) Both the request and the response may be verbal or written; however, in all cases, the required fee must be paid at the time of inquiry, pursuant to Rule 1200-7-.13.

(5) The State Registrar may respond to an inquiry seeking verification in any of the following ways:

(a) Provision of the requested verified information.

(b) Notification that no record matching the requested information could be located.

(c) Notification that information submitted by the requestor is insufficient and more information is needed in order to locate the record in question.

(d) Notification that more than one record matches the information submitted so that the requestor may either submit additional information to identify the exact record in question or purchase information from all records matching the requested information.

(6) The term "authorized representative" shall include the attorney, physician, funeral director, or other such authorized agent acting in behalf of the registrant or his family.

(7) The natural parents of adopted children or natural parents whose parental rights have been otherwise terminated shall not be considered to have a direct and tangible interest, as required in T.C.A. 68-3-206.

(8) The State Registrar may permit the use of data from vital records for research purposes. No data shall be furnished from records for research purposes until the State Registrar has prepared, in writing, the conditions under which the records or data will be used and has received an agreement signed by a responsible agent of the research organization agreeing to meet with and conform to such conditions.

(9) The State Registrar may disclose data which is not confidential from vital records to any federal, state, county or municipal agencies, courts, or law enforcement agencies which request such data in the conduct of their official duties. The Social Security numbers of the parent(s) as listed on the child's birth certificate may be disclosed for the purpose of child support enforcement.

(Rule 1200-07-01-.11, continued)

(10) The State Registrar or Local Registrar shall not issue a certified copy of a record until the applicant has provided sufficient information so that the record can be located. Whenever it shall be deemed necessary to establish an applicant's right to a certified copy of a vital record, the State Registrar or Local Registrar may also require identification of the applicant or a sworn statement as to the identity of the applicant and the applicant's relationship to the registrant.

(11) When 100 years have elapsed after the date of birth or 50 years have elapsed after the date of death, marriage or divorce or annulment of marriage, the records of these events in the custody of the State Registrar may be transferred to the state Library and Archives, if procedures of the State Library and Archives will allow for continued safekeeping of the records and for public access to the information from the records.

(12) Records which have been sealed pursuant to T.C.A. 68-3-313 may be disclosed only pursuant to T.C.A. 68-3-313, 36-1-126, 36-1-127 and 36-1-138.

(a) The requestor must present the original letter of authorization bearing the embossed State Seal from the Tennessee Department of Children's Services or a certified copy of a court order from a court of competent jurisdiction, must identify the record by either name at birth or adopted name, must provide the full date of birth, and must pay the required fee.

(b) The requestor will be provided copies of all documents in the sealed file, except that information from the "Information for Medical and Health Use Only" section of the birth certificate and information from the "Confidential Information" section of the certificate of marriage or the certificate of divorce or annulment shall not be provided.

(c) If, after opening the sealed file, a review of the contents demonstrates to the State Registrar that the file contains records of siblings or other records that do not pertain to the adoption, legitimation or paternity of the individual case being requested, such records will not be copied and released. Such records will be removed and placed in the correct sealed file or in a separate file as appropriate.

Authority: *T.C.A. §§4-5-202, 36-1-126, 36-1-127, 36-1-138, 68-3-103, 68-3-104, 68-3-205, 68-3-206, and 68-3-313.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1987. Amendment filed May 19, 1978; effective June 19, 1978. Amendment filed July 3, 1984; effective August 1, 1984. Amendment filed October 27, 1988; effective December 11, 1988. Amendment filed June 30, 1994; effective September 13, 1994. Amendment filed August 12, 1999; effective October 26, 1999. Amendment filed August 6, 2002; effective October 20, 2002.*

1200-07-01-.12 COPIES OF DATA FROM VITAL RECORDS.

(1) Full or short form certified copies of vital records may be made by mechanical, electronic or other reproductive processes. Certified copies may be issued only to the registrant or the registrant's spouse, children, parents or guardian or their respective authorized representative. Others who demonstrate that records are required for determination or protection of their personal or property right may be authorized to obtain certified copies. Information contained in the "Information for Medical and Health Use Only" section of the birth certificate and information contained in the "Confidential Information" section of the certificate of marriage or certificate of divorce or annulment shall not be included.

(2) A certified copy or other copy of a death certificate will not be issued containing the cause of death unless

(Rule 1200-07-01-.12, continued)

(a) Specifically requested by the spouse, children, parents or other next of kin of the decedent or their respective authorized representatives, or

(b) For one of the following reasons: when a documented need for the cause of death to establish a legal right or claim has been demonstrated; when the request for the copy is made by or on behalf of an organization that provides benefits to the decedent's survivors or beneficiaries; upon specific request by local, state or federal agencies for research or administrative purposes approved by the State Registrar; when needed for research activities approved by the State Registrar; or upon receipt of an order from a court of competent jurisdiction ordering such release.

(3) When a certified copy is issued, each certification shall be signed and certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office shall be affixed thereon.

(4) Verification of the facts contained in a vital record may be furnished by the State Registrar to any federal or state court or law enforcement agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in (1) and (2) above. Such verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of his office.

(5) When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, he shall have authority to withhold the issuance of a certified copy of such certificate until a court determination of the facts has been made.

(6) The given name of a child shall be entered on the face of the original certificate of birth prior to the issuance of a certified copy in full (or part). Verified information from the record may be provided prior to entering the given name on the face of the certificate.

Authority: *T.C.A. §§4-5-202, 68-3-103, 68-3-104, 68-3-105, 68-3-205, and 68-3-206.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendment filed June 30, 1994; effective September 13, 1994. Amendment filed August 12, 1999; effective October 26, 1999.*

1200-07-01-.13 FEES FOR COPIES AND SEARCHES.

(1) No certified or uncertified copy or service shall be provided until the current fee for such copy or service is received, unless specific approval has been obtained from the State Registrar or otherwise provided for by statute or regulation. If an applicant claims that he did not receive a certificate that was purchased from the Office of Vital Records, he may use his receipt or cancelled check to purchase another copy within forty-five (45) days; after forty-five (45) days, he must remit the fee in order to obtain another copy.

(2) The State Registrar shall determine the cost, including staff time, computer time, copying cost, and supplies, for handling any non-routine statistical or research project or any other non-routine service other than those described below. The person requesting any such non-routine service will be responsible for paying the cost associated with completing the service.

(3) Fees for services from the Office of Vital Records.

~~(a) For a 3-year search of the files and issuance of one certified abstract of a birth record if found: ..... $8.00~~

(Rule 1200-07-01-.13, continued)

(a) For a 3-year search of the files and issuance of one certified abstract of a birth record if found: $15.00

~~(b) For each additional certified abstract of the same birth record issued at the same time..... $5.00~~

(b) For each additional certified abstract of the same birth record issued at the same time..... $15.00

(c) For a 3-year search of the files and issuance of one certified or uncertified copy of birth, marriage, or divorce record if found: $15.00

~~(d) For each additional copy of the same birth, marriage, or divorce record issued at the same time: ..... $5.00~~

(d) For each additional copy of the same birth, marriage, or divorce record issued at the same time: $15.00

~~(e) For a 3-year search of the files and issuance of a certified or uncertified copy of a death record:..... $7.00~~

(e) For a 3-year search of the files and issuance of a certified or uncertified copy of a death record:..... $15.00

~~(f) For a 3-year search of the files of reports of fetal death andissuance of one certified copy if found..... $7.00~~

(f) For a 3-year search of the files of reports of fetal death and issuance of one certified copy if found..... $15.00

(g) For preparing a new certificate of birth by adoption, legitimation, or order of parentage: $15.00

(h) For amending a birth, death, marriage, or divorce certificate one year or more after the date of the event: $15.00

(i) For preparing and filing a report of an adoption for aforeign-born person adopted in Tennessee: $15.00

(j) For preparing and filing a delayed certificate of birth, death, marriage, or divorce: $15.00

(k) For amending a birth certificate to remove the named father based on a Rescission of Voluntary Acknowledgment of Paternity, unless the requestor submits an Affidavit of Indigency to waive the fee entirely: $15.00

(l) For a certified or uncertified copy of the supporting documentation used to file or amend a record, which must be requested at the same time as the copy of the record is requested, per document: $5.00

(m) For opening a sealed file and providing one copy of the contents of the sealed file:..... $30.00

(n) For a search in a specified year designated by the requestor of the birth, death, marriage, or divorce files for the purpose of providing verified information on a

(Rule 1200-07-01-.13, continued)

requested record, even if the record is not found and no information from it can be provided: $15.00

(o) Additional handling charge for non-routine, expedited service and all special delivery mail that requires special attention: $5.00

(p) Up to three free copies of the death certificate of a veteran of the United States Armed Services may be provided. The person requesting such copy must be related to the deceased within two (2) degrees of collateral or lineal kinship. (q)For a birth, marriage, or divorce record copy, certified or uncertified, issued to another government agency: $12.00

(q) For a birth, marriage, or divorce record copy, certified or uncertified, issued to another government agency: $15.00

~~(r) For a death record copy, certified or uncertified, issued to another government agency: ..... $7.00~~

(r) For a death record copy, certified or uncertified, issued to another government agency: $15.00

~~(s) For a certified birth abstract, issued to another government agency: ..... $8.00~~

(s) For a certified birth abstract, issued to another government agency: $15.00

(t) For a permit to cremate a dead body: $25.00

(u) For preparing and filing a certificate of birth resulting in stillbirth $15.00

(v) For amending a certificate of birth resulting in stillbirth $15.00

(w) For a 3 year search of the files of certificates of birth resulting in stillbirth and issuance of a copy 15.00

(x) For each additional copy of the same certificate of birth resulting in stillbirth issued at the same time $5.00

Authority: *T.C.A. §§4-5-202, 4-5-203, 4-5-404, 24-7-118, 68-3-103, 68-3-205, 68-3-206, 68-3-207 and 63-3-504..* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 18, 1978; effective February 17, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed July 1, 1982; effective August 2, 1982. Amendment filed July 3, 1984; effective August 1, 1984. Amendment filed May 29, 1987; effective July 13, 1987. Amendment filed February 19, 1988; effective April 4, 1988. Amendment filed October 27, 1988; effective December 11, 1988. Amendment filed June 30, 1994; effective September 13, 1994. Amendment filed August 12, 1999; effective October 26, 1999. Amendment filed August 6, 2002; effective October 20, 2002. Amendment filed August 20, 2008; effective November 3, 2008. Emergency rule filed July 26, 2010; effective through January 22, 2011. Emergency rule filed July 26, 2010 expired effect January 23, 2011; rule reverted to its previous status. Amendment filed November 10, 2010; effective February 8, 2011.*

1200-07-01-.14 PERSONS REQUIRED TO KEEP RECORDS AND FILE REPORTS.

(1) Each funeral director shall keep a record containing, as a minimum, the following information about each dead body or fetus he handles:

(a) The date, place, and time of receipt;

(b) The date, place, and manner of disposition;

(Rule 1200-07-01-.14, continued)

(c) If the dead body or fetus is delivered to another funeral director, the date of such delivery and the name and address of the funeral director to whom delivered;

(d) The items required by the certificate of death in use when the event occurs for those events for which he is required to file the certificate.

(2) Each funeral director shall file a report with the Local Registrar by the third day of each month of each body and fetus for which he has been responsible during the preceding month. The report shall be on a form provided by the State Registrar and shall contain:

(a) full name of deceased

(b) date of death

(c) place of death

(d) name and address of funeral director

(c) name and address of physician last in attendance

(3) All superintendents, managers, administrators or other persons in charge of hospitals, public or private nursing homes, or clinics, or other institutions, including penal institutions to which persons resort for treatment of disease, injury or childbirth or are committed by process of law shall report each birth, death, or fetal death occurring to the inmates of their institutions to the Local Registrar by the third day of the month after the event occurred. The report shall be made on a form furnished by the State Registrar and shall include all of the statistical information required by the State Registrar.

Authority: *T.C.A. §§53-404 and 53-444.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed January 17, 1978; effective February 17, 1978.*

1200-07-01-.15 CERTIFICATES OF BIRTH RESULTING IN STILLBIRTH.

(1) "Stillbirth" means an unintended, intrauterine fetal death after a gestational age of not less than twenty (20) completed weeks or with a weight of three hundred fifty (350) grams or more.

(2) The state registrar shall prepare a certificate of birth resulting in stillbirth when the following conditions are met:

(a) A parent named in the report of fetal death (stillbirth) has submitted a request for a certificate of birth resulting in stillbirth; and

(b) The stillborn had attained a weight of three hundred fifty (350) grams or more or a gestational age of at least twenty (20) completed weeks.

(c) In the case of a stillbirth which occurred on or before July 1, 2010, or in the case in which no report of fetal death (stillbirth) is available, evidence that the stillborn met the gestational weight and/or age requirements set forth in (b) above may be proved by the notarized statement of the physician in attendance, birthing institution, nurse-midwife or other knowledgeable informant.

(d) The request for the certificate of birth resulting in stillbirth shall be made on the form provided by the department, which shall include

(Rule 1200-07-01-.15, continued)

1. The date of the stillbirth;
2. The county in which the stillbirth occurred;
3. The state file number of the report of fetal death (stillbirth), if known;
4. The sex of the stillborn, if known;
5. The name if any, selected by the requesting parent;
6. The name of the mother who delivered the stillborn;
7. The name of the father of the stillborn;
8. In the case of a stillbirth to an unmarried mother, the father may submit the request upon submission of a voluntary acknowledgment of paternity; or a finding of parentage by a court.

(3) In any case in which no given name is provided to the registrar on the report of fetal death (stillbirth), or the requestor does not provide a name to the registrar, the first name shall be left blank on the certificate, and the last name of the parent or parents shall be entered as provided in T.C.A §68-3-301 et seq.

(4) A certificate of birth resulting in stillbirth may be amended upon the request of the original requestor(s).

(5) A certificate of birth resulting in stillbirth shall not be proof of a live birth for any purpose, nor shall it be used by the Department to calculate live birth statistics. Each certificate of birth resulting in stillbirth shall state "this certificate is not proof of live birth."

Authority: *T.C.A. §§ 68-3-102 and 68-3-514.* ***Administrative History:*** *Emergency rule filed July 26, 2010; effective through January 22, 2011. Emergency rule filed July 26, 2010 expired effective January 23, 2011; rule reverted to its previous status. .Original rule filed November 10, 2010; effective February 8, 2011.*

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* 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 Policy Planning and Assessment Division, Office of Vital Records (board/commission/ other authority) on 03/11/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/15/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 03/11/15 (mm/dd/yy)

Date: 3/12/15

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel, Department of Health

MARK INGRAM STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: 03/12/2015

Notary Public Signature: Mark Ingram

My commission expires on: My Commission Expires: 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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/24/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/30/15

Effective on: 6/28/15

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:	Standards for Facilities Licensed by the Board for Licensing of Health Care Facilities
. STATUTORY AUTHORITY:	Tennessee Code Annotated, Title 68, Chapter 11, Parts 2, 11; and 1800; and Chapter 57, Part 1
EFFECTIVE DATES:	June 25, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These amendments will change the definitions for abuse, misappropriation of resident belongings, and neglect in all of the above stated sections. Amendments to rule 1200-08-06-.15 will require the closure of nurse aid training programs that fall below a seventy percent pass rate after three consecutive years. Those students currently enrolled in the program would be allowed to finish. Any program that is closed may appeal the closure to the Board. Amendments to Rules 1200-08-01-.07 and 1200-08-10-.06 will require surgical technicians to complete fifteen hours of continuing education credits annually per 2013 Public Chapter No. 391. Amendments to Rule 1200-08-10-.06 will require completion of forms including informed consent forms, advance directive forms, and organ donation forms prior to surgery except in the event of emergencies. Also, the rule amendment modifies the list of equipment deemed to be adequate under surgical services. Finally, new provisions in 1200-08-10-.06 set out who can perform certain invasive spinal procedures in an ASTC. Rules 1200-08-15-.01 and 1200-08-27-.01 will amend definitions for “Hospice Services.”

Rules 1200-08-15-.06(b) and 1200-08-27-.06(b) are being amended to allow a fifteen (15), rather than fourteen (14) day maximum interval in which a patient's treatment plan must be reviewed.

Amendments to Rule 1200-08-25 will require facilities to offer and encourage all staff and independent practitioners to obtain an influenza vaccination. They will also amend the definition of "administering medication," and add new definitions for "assistance with self-administration of medication" and "self-administration of medication."

Amendments to rules 1200-08-25.07 and 1200-08-36.06 will require the facility to dispose of the medication in the manner outlined in their medication disposal policy which shall comply with the current FDA or current DEA disposal guidelines without a request from a family member or a legal representative.

Amendments to rule 1200-08-27-.06 Basic Agency Functions will allow the agency to contract for physician services.

Amendments to rule 1200-08-29-.04 will replace the word "manager" with "administrator" under Definitions and Administration.

Pursuant to 2013 Public Chapter No. 254, the Board seeks to amend the current rules regarding policies and procedures for health care decision-making applicable to all health care facilities governed by rule 1200-08 by deleting references to universal do not resuscitate orders and using in its stead the title, "Physician Orders for Scope of Treatment". The proposed rule amendment gives the physician, physician's assistant, nurse practitioner or clinical nurse specialist the authority to issue the orders for scope of treatment if the necessary relationship is established. Newly proposed paragraph (e) provides the caveat that nothing in these rules shall authorize the withholding of other medical interventions or therapies deemed necessary to provide comfort care or to alleviate pain. Definitions are also being amended to remove "universal do not resuscitate orders" and add a definition for "physicians orders for scope of treatment."

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.

September 10, 2014
Rulemaking Hearing Comments

There were two comments received during the rulemaking hearing.

The first comment was from Judy Eads, President of the End of Life Partnership, who requested that the Board make three changes to the Physician Orders for Scope of Treatment form, which is attached to the last rule in all but two rule chapters. Ms. Eads suggested the Board remove the “or" in the first sentence of Section A as well as the phrase "Must Select Full Treatment in Section B). Ms. Eads also requested the Board to remove the second signature line for Nurse Practitioners, Certified Nurse Specialists and Physician Assistants and for the Board to add these terms to the Physician’s signature line. She posited that this change would be clearer and leave no question remaining as to who can sign the form or if the physician’s signature will always be required (which it is not). Ms. Eads also supported the remaining rule amendments.

The Board voted to accept all the changes requested by Ms. Eads.

The second and last person to address the Board was Yarnell Beatty, representing the Tennessee Medical Association, who spoke in support of adoption of the proposed rules and expressed particular support for the amendments to invasive procedures. He supported the Board’s attempt to make the standards for invasive procedures the same across the board.

New rules, 1200-08-29-.15 and .16 as well as rules 1200-08-30-.06 and .07, were deleted because the Board did not previously approve those changes.

The Board accepted these deletions.

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.

REGULATORY FLEXIBILITY ANALYSIS

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

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

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

These rule amendments exhibit clarity, conciseness, and lack of ambiguity.

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

These rule amendments do not establish flexible compliance and/or reporting requirements for small businesses.

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

These rule amendments do not establish friendly schedules or deadlines for compliance and /or reporting requirements for small businesses.

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

These rule amendments do not consolidate or simplify reporting requirements for small businesses.

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

These rule amendments do not establish performance standards for small business as opposed to design or operation standards.

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

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

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Health Care Facilities

Rulemaking hearing date: September 10, 2014

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   These rule amendments affect the various health care facilities and medical practitioners in those facilities, or contracting with those facilities as well as residents and consumers of those medical services. Those various health care facilities and medical practitioners will bear the cost of and/or directly benefit from the proposed rule.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   These rule amendments may minimally increase expenditures for reporting, recordkeeping, and other administrative costs. The amendments create additional continuing education classes for surgical technicians pursuant to 2013 Public Chapter 391 and further require surgical technicians to complete informed consent forms, advance directive forms, and organ donation forms prior to surgery. Also, the rule amendments will require forms to be completed before Assisted Care Living Facilities can dispose of or release medication to the resident's legal representative upon the resident's death.

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

   Aside from the minimal costs increases for reporting, these rule amendments will have a positive effect on both businesses and consumers. Business will benefit from the clarification presented in the amendments which closely detail the procedures required for specific functions performed by the various health care facilities including: medication disposal, continuing education, and scope of treatment.

   Consumers will likewise benefit from the rule amendments because the necessary pre-operation forms will be properly completed before surgery and hospital staff will no longer have to wait on a physician to have a scope of treatment implemented because a nurse practitioner or physician assistant, acting within the respective scope of practice, may sign the form.

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

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule.

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

   Federal: None.

   State: None.

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

   These rule amendments do not provide for the exemption of small businesses.

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: 03-29-15 Rule ID(s): 5904 5920 File Date: 3/27/15 Effective Date: 6/25/15

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:	Kyonzte Hughes-Toombs Assistant General Counsel
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Revision Type (check all that apply):

X 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**
1200-08-01	Standards for Hospitals
Rule Number	**Rule Title**
1200-08-01-.01	Definitions
1200-08-01-.07	Optional Hospital Services
1200-08-01-.13	Policies and Procedures for Health Care Decision-Making
1200-08-01-.15	Appendix I

Chapter Number	**Chapter Title**
1200-08-02	Standards for Prescribed Child Care Centers
Rule Number	**Rule Title**
1200-08-02-.01	Definitions
1200-08-02-.12	Policies and Procedures for Health Care Decision-Making
1200-08-02-.14	Appendix I

Chapter Number	**Chapter Title**
1200-08-06	Standards for Nursing Homes
Rule Number	**Rule Title**
1200-08-06-.01	Definitions
1200-08-06-.13	Policies and Procedures for Health Care Decision-Making
1200-08-06-.15	Nurse Aide Training and Competency Evaluation
1200-08-06-.16	Appendix I

Chapter Number	**Chapter Title**
1200-08-10	Standards for Ambulatory Surgical Treatment Centers

Rule Number	Rule Title
1200-08-10-.01	Definitions
1200-08-10-.06	Basic Services
1200-08-10-.13	Policies and Procedures for Health Care Decision-Making
1200-08-10-.15	Appendix I

Chapter Number	Chapter Title
1200-08-11	Standards for Homes for the Aged
Rule Number	**Rule Title**
1200-08-11-.01	Definitions
1200-08-11-.12	Policies and Procedures for Health Care Decision-Making
1200-08-11-.14	Appendix I

Chapter Number	Chapter Title
1200-08-15	Standards for Residential Hospices
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1200-08-15-.06	Plan of Care
1200-08-15-.13	Policies and Procedures for Health Care Decision-Making
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Chapter Number	Chapter Title
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1200-08-29	Standards for Home Care Organizations Providing Home Medical Equipment
Rule Number	**Rule Title**
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1200-08-29-.04	Administration

Chapter Number	**Chapter Title**
1200-08-30	Standards for Pediatric Emergency Care Facilities
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RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-01
STANDARDS FOR HOSPITALS

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1200-08-01-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Acceptable Plan of Correction. The Licensing Division shall approve a hospital's acceptable plan to correct deficiencies identified during an on-site survey conducted by the Survey Division or its designated representative. The plan of correction shall be a written document and shall provide, but not limited to, the following information:

(a) How the deficiency will be corrected.

(b) Who will be responsible for correcting the deficiency.

(c) The date the deficiency will be corrected.

(d) How the facility will prevent the same deficiency from re-occurring.

(3)~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4)~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5)~~(4)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6)~~(5)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(7)~~(6)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

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

(8)~~(7)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9)~~(8)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(10)~~(9)~~ Certified Nurse Practitioner. A person who is licensed as a registered nurse and has further been issued a certificate of fitness to prescribe and/or issue legend drugs by the Tennessee Board of Nursing.

(11)~~(10)~~ Certified Registered Nurse Anesthetist. A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.

(12)~~(11)~~ Certified Respiratory Therapist. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.

(13)~~(12)~~ Certified Respiratory Therapy Technician. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.

(14)~~(13)~~ Clinical Laboratory Improvement Act (CLIA). The federal law requiring that clinical laboratories be approved by the U.S. Department of Health and Human Services, Health Care Financing Administration.

(15)~~(14)~~ Collaborative Practice. The implementation of the collaborative plan that outlines procedures for consultation and collaboration with other health care professional, e.g., licensed physicians and mid-level practitioners.

(16)~~(15)~~ Collaborative Plan. The formal written plan between the mid-level practitioners and a licensed physician.

(17)~~(16)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(18)~~(17)~~ Competent. A patient who has capacity.

(19)~~(18)~~ Critical Access Hospital. A hospital located in a rural area, certified by the Department as being a necessary provider of health care services to residents of the area, which makes available twenty-four (24) hour emergency care; is a designated provider in a rural health network; provides not more than twenty-five (25) acute care inpatient beds for providing inpatient care not to exceed an annual average of ninety-six (96) hours, and has a quality assessment and performance improvement program and procedures for utilization review. If swing-bed approval has been granted, all twenty-five (25) beds can be used interchangeably for acute or Skilled Nursing Facility (SNF/swing-bed) level of care services.

(20)~~(19)~~ Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(21)~~(20)~~ Department. The Tennessee Department of Health.

(22)~~(21)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the

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

absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(23)~~(22)~~ Designation. An official finding and recognition by the Department of Health that an acute care hospital meets Tennessee State Rural Health Care Plan requirements to be a Critical Access Hospital.

(24)~~(23)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. §63-25-104.

~~(24) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical records which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(25) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(26)~~(25)~~ Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(27)~~(26)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(28)~~(27)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(29)~~(28)~~ Graduate Registered Nurse Anesthetist. A registered nurse currently licensed in Tennessee who is a graduate of a nurse anesthesia educational program that is accredited by the American Association of Nurse Anesthetist's Council on Accreditation of Nurse Anesthesia Educational Programs and awaiting initial certification examination results, provided that initial certification is accomplished within eighteen (18) months of completion of an accredited nurse anesthesia educational program.

(30)~~(29)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(31)~~(30)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(32)~~(31)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(33)~~(32)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(34)~~(33)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-

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

01-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(35) ~~(34)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(36) ~~(35)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(37) ~~(36)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with services of a physician or dentist, to one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment. All hospitals shall provide basic hospital functions and may provide optional services as delineated in these rules. A hospital shall be designated according to its classification and shall confine its services to those classifications described below.

(a) General Hospital. To be licensed as a general hospital, the institution shall maintain and operate organized facilities and services to accommodate one or more non-related persons for a period exceeding twenty-four (24) hours for the diagnosis, treatment or care of such persons and shall provide medical and surgical care of acute illness, injury or infirmity and obstetrical care. All diagnosis, treatment and care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. In addition, a general hospital must specifically provide:

1. An organized staff of professional, technical and administrative personnel.

2. A laboratory with sufficient equipment and personnel necessary to perform biochemical, bacteriological, serological and parasitological tests.

3. X-ray facilities which shall include, as a minimum requirement, a complete diagnostic radiographic unit.

4. A separate surgical unit which shall include, as minimum requirements, one operating room, a sterilizing room, a scrub-up area and workroom.

5. Obstetrical facilities which shall include, as minimum requirements, one delivery room, a labor room, a newborn nursery, an isolation nursery, and patient rooms designated exclusively for obstetrical patients.

6. An emergency department in accordance with rule 1200-08-01-.07(5) of these standards and regulations.

(b) Satellite Hospital. A satellite hospital may be licensed with a parent hospital upon approval by the Board for Licensing Health Care Facilities when they are on separate premises and are operated under the same management.

(c) Chronic Disease Hospital. To be licensed as a chronic disease hospital, the institution shall be devoted exclusively to the diagnosis, treatment or care of persons needing medical, surgical or rehabilitative care for chronic or long-term illness, injury, or infirmity. The diagnosis, treatment or care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. A chronic disease hospital shall meet the requirements for a general hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.

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

(d) Orthopedic Hospital. To be licensed as an orthopedic hospital, the institution shall be devoted primarily to the diagnosis and treatment of orthopedic conditions. An orthopedic hospital shall meet the requirements for a general hospital except that obstetrical services are not required and, if the hospital provides no surgical services, an emergency department is not required.

(e) Pediatric Hospital. To be licensed as a pediatric hospital, the institution shall be devoted primarily to the diagnosis and treatment of pediatric cases and have on staff professional personnel especially qualified in the diagnosis and treatment of the diseases of children. A pediatric hospital shall meet the requirements of a general hospital except that obstetrical facilities are not required and if the hospital provides no surgical services, an emergency department is not required.

(f) Eye, Ear, Nose, and Throat Hospital or any one of these. To be licensed as an eye, ear, nose and throat hospital, the institution shall be devoted primarily to the diagnosis and treatment of the diseases of the eye, ear, nose, and throat. The hospital shall have on staff professional personnel especially qualified in the diagnosis and treatment of diseases of the eye, ear, nose and throat. An eye, ear, nose and throat hospital shall meet the requirements for a general hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.

(g) Rehabilitation Hospital. To be licensed as a rehabilitation hospital, the institution shall be devoted primarily to the diagnosis and treatment of persons requiring rehabilitative services. A rehabilitation hospital shall meet the requirement of a general hospital except that radiology services, a surgical unit, obstetrical facilities, and an emergency department are not required.

(38) ~~(37)~~ Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such persons, and maternity care involving labor and delivery for any period of time.

(39)~~(38)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(40)~~(39)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(41)~~(40)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(42)~~(41)~~ Involuntary Transfer. The movement of a patient between hospitals, without the consent of the patient, the patient's legal guardian, next of kin or representative.

(43)~~(42)~~ Justified Emergency. Includes, but is not limited to, the following events/ occurrences:

(a) An influx of mass casualties;

(b) Localized and/or regional catastrophes such as storms, earthquakes, tornadoes, etc. or,

(c) Epidemics or episodes of mass illness such as influenza, salmonella, etc.

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

(44)~~(43)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(45)~~(44)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(46)~~(45)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(47)~~(46)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(48)~~(47)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part, which includes labor when delivery is imminent, when there is inadequate time to effect safe transfer to another hospital prior to delivery, or when a transfer may pose a threat to the health and safety of the patient or the unborn child.

(49)~~(48)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations. and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(50)~~(49)~~ Medical Staff. An organized body composed of individuals appointed by the hospital governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff shall be licensed to practice in Tennessee, with the exception of interns and residents.

(51)~~(50)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(52)~~(51)~~ Member of the Professional Medical Community. A professional employed by the hospital and on the premises at the time of a voluntary delivery.

(53)~~(52)~~ Mid-Level Practitioner. Either a certified nurse practitioner or a physician assistant.

(54) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(55) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(56)~~(53)~~ N.F.P.A. The National Fire Protection Association.

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

(57)~~(54)~~ Nuclear Medicine Technologist. A person currently registered as such by the National Association for Nuclear Medicine Technology.

(58)~~(55)~~ Nurse Midwife. A person currently licensed by the Tennessee Board of Nursing as a registered nurse (R.N.) and qualified to deliver midwifery services or certified by the American College of Nurse-Midwives.

(59)~~(56)~~ Occupational Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(60)~~(57)~~ Occupational Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(61)~~(58)~~ Optometrist. A person currently licensed as such by the Tennessee Board of Optometry.

(62)~~(59)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

~~(60) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(63)~~(61)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(64)~~(62)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(65)~~(63)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(66)~~(64)~~ Physical Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(67)~~(65)~~ Physical Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(68)~~(66)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

~~(67) Physician Assistant. A person who is licensed by the Tennessee Board of Medical Examiners and Committee on Physician Assistants and has obtained prescription writing authority pursuant to T.C.A. 63-19-107(2)(A).~~

(69) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

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

(70) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(71)~~(68)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(72)~~(69)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(73)~~(70)~~ Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(74)~~(71)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(75)~~(72)~~ Radiological Technologist. A person currently registered as such by the American Society of Radiological Technologists.

(76)~~(73)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(77)~~(74)~~ Registered Health Information Administrator (RHIA). A person currently registered as such by the American Health Information Management Association.

(78)~~(75)~~ Registered Health Information Technician (RHIT). A person currently accredited as such by the American Health Information Management Association.

(79)~~(76)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(80)~~(77)~~ Satellite Hospital. A freestanding hospital licensed with a parent hospital that is on separate premises and operated under the same management.

(81)~~(78)~~ Shall or Must. Compliance is mandatory.

(82)~~(79)~~ Social Worker. A person who has at least a bachelor's degree in Social Work or related field, and preferably, two (2) years medical social work or other community based work experience.

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

(83)~~(80)~~ Stabilize. To provide such medical treatment of the emergency medical condition as may be necessary to assure, within reasonable medical probability, that the condition will not materially deteriorate due to the transfer as determined by a physician or other qualified medical personnel when a physician is not readily available.

(84)~~(81)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(85)~~(82)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(86)~~(83)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(87)~~(84)~~ Surgical Technologist. A person who works under supervision to facilitate the safe and effective conduct of invasive surgical procedures. This individual is usually employed by a hospital, medical office, or surgical center and supervised during the surgical procedure according to institutional policy and procedure to assist in providing a safe operating room environment that maximizes patient safety by performing certain tasks including, but not limited to:

(a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

(88)~~(88)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(89)~~(86)~~ Transfer. The movement of a patient between hospitals at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for hospital care.

(90)~~(87)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

(91)~~(88)~~ Treating Physician. The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such person may be deemed to be the "treating physician."

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

~~(89) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(92)~~(90)~~ Voluntary Delivery. The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a hospital with any hospital employee or member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, 68-11-1802, 68-57-101, 68-57-102 and 68-57-105.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed April 3, 1974; effective May 3, 1974. Amendment filed November 30, 1984; effective December 30, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 26, 1996; effective July 8, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Repeal, except for Paragraphs (1), (5), (8), (10), (11), (13), (16), (29) and (37) as promulgated February 6, 2000, and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed August 27, 2004; effective November 10, 2004. Amendments filed September 6, 2005; effective November 20, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed March 18, 2010; effective June 16, 2010. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-01-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any hospital without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the hospital.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee based on the number of hospital beds. The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the hospital until a license has been issued. Applicants shall not hold themselves out to the public as being a hospital until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by T.C.A. §68-11-206(1), or as later amended, and of all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

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

3. Hemoglobin or hematocrit;

4. Blood sugar;

5. Gram stain;

6. Examination of stool specimens for occult blood;

7. Pregnancy test;

8. Primary culturing for transmittal to a CLIA certified laboratory;

9. Sediment rate; and,

10. CBC.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed September 6, 2005; effective November 20, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed March 18, 2010; effective June 16, 2010.*

1200-08-01-.07 OPTIONAL HOSPITAL SERVICES.

(1) Surgical Services.

(a) If the hospital provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(b) The organization of the surgical services must be appropriate to the scope of the services offered.

(c) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(d) A hospital may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (LPN) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(e) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable state laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(f) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(Rule 1200-08-01-.07, continued)

(g) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(h) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

3. Have completed an appropriate training program for surgical technologists in the armed forces or at a CAAHEP accredited hospital or CAAHEP accredited ambulatory surgical treatment center; or

4. Successfully complete the surgical technologists LCC-ST certifying exam; or

5. Provide sufficient evidence that, prior to May 21, 2007, the person was at any time employed as a surgical technologist for not less than eighteen (18) months in the three (3) years preceding May 21, 2007 in a hospital, medical office, surgery center, or an accredited school of surgical technology; or has begun the appropriate training to be a surgical technologist prior to May 21, 2007, provided that such training is completed within three (3) years of May 21, 2007.

(i) A hospital can petition the director of health care facilities of the department for a waiver from the provisions of 1200-08-01-.07(1)(h) if they are unable to employ a sufficient number of surgical technologists who meet the requirements. The facility shall demonstrate to the director that a diligent and thorough effort has been made to employ surgical technologist who meet the requirements. The director shall refuse to grant a waiver upon finding that a diligent and thorough effort has not been made. A waiver shall exempt a facility from meeting the requirements for not more than nine (9) months. Additional waivers may be granted, but all exemptions greater than twelve (12) months shall be approved by the Board for Licensing Health Care Facilities.

~~(j) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal.~~

(j) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal. Persons qualified to be employed as surgical technologists shall complete fifteen (15) hours of continuing education or contact hours annually. Current certification by the National Board of Surgical Technology and Surgical Assisting shall satisfy this requirement.

(k) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If the history has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

(Rule 1200-08-01-.07, continued)

(l) Properly executed informed consent, advance directive, and organ donation forms, when applicable, must be in the patient's chart before surgery, except in emergencies.

(m) The following equipment must be available to the operating room suites:

1. Call-in system;

2. Cardiac monitor;

3. Resuscitator;

4. Defibrillator;

5. Aspirator; and

6. Tracheotomy set.

(n) There must be adequate provisions for immediate pre and post-operative care.

(o) The operating room register must be complete and up-to-date.

(p) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

(2) Anesthesia Services.

(a) If the hospital furnishes anesthesia services, they must be provided in a well organized manner under the direction of a qualified doctor of medicine or osteopathy. The service is responsible for all anesthesia administered in the hospital.

(b) The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered only by:

1. A qualified anesthesiologist;

2. A doctor of medicine or osteopathy (other than an anesthesiologist);

3. A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

4. A certified registered nurse anesthetist (CRNA); or

5. A graduate registered nurse anesthetist under the supervision of an anesthesiologist who is immediately available if needed.

(c) Anesthesia services must be consistent with needs and resources. Policies on anesthesia procedures must include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies must ensure that the following are provided for each patient:

1. A pre-anesthesia evaluation or evaluation update conducted within forty-eight (48) hours prior to surgery by an individual qualified to administer anesthesia;

2. An intraoperative anesthesia record;

(Rule 1200-08-01-.07, continued)

3. For each inpatient, a written post-anesthesia follow-up report prepared within forty-eight (48) hours following surgery by an individual qualified to administer anesthesia or by the person who administered the anesthesia and submits the report by telephone; and

4. For each outpatient, a post-anesthesia evaluation of anesthesia recovery prepared in accordance with policies and procedures approved by the medical staff.

(3) Nuclear Medicine Services.

(a) If the hospital provides nuclear medicine services, those services must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the nuclear medicine service must be appropriate to the scope and complexity of the services offered.

(c) There must be a director who is a doctor of medicine or osteopathy qualified in nuclear medicine.

(d) The qualifications, training, functions, and responsibilities of nuclear medicine personnel must be specified by the service director and approved by the medical staff.

(e) Radioactive materials must be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice.

(f) In-house preparation of radiopharmaceuticals is by, or under, the direct supervision of an appropriately trained registered pharmacist or a doctor of medicine or osteopathy.

(g) If laboratory tests are performed in the nuclear medicine service, the service must meet the applicable requirements for laboratory services as specified in TCA § 68-29-101, et seq.

(h) Equipment and supplies must be appropriate for the types of nuclear medicine services offered and must be maintained for safe and efficient performance. The equipment must be:

1. Maintained in safe operating condition; and,

2. Inspected, tested, and calibrated at least annually by qualified personnel.

(i) The hospital must maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures. Copies of nuclear medicine reports must be maintained for at least ten (10) years.

(j) The practitioner approved by the medical staff to interpret diagnostic procedures must sign and date the interpretation of these tests.

(k) The hospital must maintain records of the receipt and disposition of radiopharmaceuticals.

(l) Nuclear medicine services must be ordered only by a practitioner whose scope of federal or state licensure and whose defined staff privileges allow such referrals.

(m) Patients are not left unattended in pre and post procedure areas.

(Rule 1200-08-01-.07, continued)

(4) Outpatient Services.

(a) If the hospital provides outpatient services, the services must meet the needs of the patients in accordance with acceptable standards of practice.

(b) Outpatient services must be appropriately organized and integrated with inpatient services.

(c) The hospital must have appropriate professional and non-professional personnel available to provide outpatient services.

(d) Patient's rights, including a phone number to call regarding questions or concerns, shall be made readily available to outpatients.

(e) Outpatient laboratory testing in Tennessee hospitals may be ordered by the following:

1. Any licensed Tennessee practitioner who is authorized to do so by T.C.A. § 68-29-121;

2. Any out of state practitioner who has a Tennessee telemedicine license issued pursuant to rule 0880-02-.16; or

3. Any duly licensed out of state health care professional as listed in T.C.A. § 68-29-121 who is authorized by his or her state board to order outpatient laboratory testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-02-.14(7)(a)1., 2., and 3.

(f) Outpatient diagnostic testing in Tennessee hospitals may be ordered by the following:

1. Any Tennessee practitioner licensed under Title 63 who is authorized to do so by his or her practice act;

2. Any out of state practitioner who has a Tennessee telemedicine license issued pursuant to rule 0880-02-.16; or

3. Any duly licensed out of state health care professional who is authorized by his or her state board to order outpatient diagnostic testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-02-.14(7)(a)1., 2., and 3.

(5) Emergency Services.

(a) Hospitals that elect to provide surgical services, other than in a separately licensed Ambulatory Surgical Treatment Center, must maintain and operate an emergency room.

(b) If emergency services are provided, the hospital must meet the emergency needs of patients in accordance with acceptable standards of practice. Each hospital must have a policy which assures that all patients who present to the emergency department, are screened/triaged to determine if a medical emergency exists and stabilized when a medical emergency does exist. A hospital may deny access to patients when it is on diversionary status only because it does not have the staff or facilities in the emergency department to accept any additional emergency patients at that time. If an ambulance disregards the hospital's instructions and brings an individual on to the hospital grounds, the individual has arrived on hospital property and cannot be denied access to

(Rule 1200-08-01-.07, continued)

hospital services. Hospital property, for the purpose of this subparagraph, is considered to be:

1. The hospital's physical geographic boundaries; or

2. Ambulances owned and operated by the hospital, whenever in operation, whether or not on hospital grounds.

(c) A hospital may not delay provision of an appropriate medical screening examination in order to inquire about the individual's method of payment or insurance status.

(d) If emergency services are provided at the hospital:

1. The services must be organized under the direction of a qualified member of the medical staff;

2. The services must be integrated with other departments of the hospital; and

3. The policies and procedures governing medical care provided in the emergency service or department are established by and are a continuing responsibility of the medical staff. These policies and procedures must define how the hospital will assess, stabilize, treat and/or transfer patients.

(e) There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

(f) There shall be a sufficient number of emergency rooms and adequate equipment and supplies to accommodate the caseload of the emergency services.

(g) The entrance to the emergency department shall be clearly marked.

(h) Legend drugs in emergency rooms shall be stored in locked cabinets, except as otherwise provided for emergency drugs by the written policies and procedures of the hospital. Discharge medications may be dispensed to out-patients upon written physician orders provided that they have been packaged in containers by the pharmacist in amounts not to exceed twelve (12) hours dosage and labeled in accordance with Pharmacy Board rules.

(i) Emergency Room medical records shall include the following:

1. Identification data;

2. Information concerning the time of arrival, means and by whom transported;

3. Pertinent history of the injury or illness to include chief complaint and onset of injuries or illness;

4. Significant physical findings;

5. Description of laboratory, x-ray and EKG findings;

6. Treatment rendered;

7. Condition of the patient on discharge or transfer;

8. Diagnosis on discharge;

(Rule 1200-08-01-.07, continued)

9. Instructions given to the patient or his family; and

10. A control register listing chronologically the patient visits to the emergency room. The record shall contain at least the patient's name, date and time of arrival and record number. The name of those dead on arrival shall be entered in the register.

(j) Emergency patients and their families are made aware of their rights, including a number to call regarding concerns or questions.

(6) Rehabilitation Services.

(a) If the hospital provides rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services must be organized and staffed to ensure the health and safety of patients. These disciplines should document their contribution to the plan for patient care.

(b) The organization of the service must be appropriate to the scope of the services offered.

(c) The director of the service must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(d) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, must be provided by staff who meet the qualifications specified by hospital policy, consistent with state law.

(e) Services must be furnished in accordance with a written plan of treatment. Services must be given in accordance with orders of practitioners who are authorized by the medical staff to order the services and the orders must be incorporated in the patient's record.

(7) Obstetrical Services.

(a) If a hospital provides obstetrical services it shall have space, facilities, equipment and qualified personnel to assure appropriate treatment of all maternity patients and newborns.

(b) The hospital must have written policies and procedures governing medical care provided in the obstetrical service which are established by and are a continuing responsibility of the medical staff.

(c) Provisions must be made for care of the patient during labor and delivery, either in the patient's room or in a designated room.

(d) Designated delivery rooms shall be segregated from patient areas and be located so as not to be used as a passageway between or subject to contamination from other parts of the hospital.

(e) A delivery record shall be kept that must indicate:

1. The name of the patient;

2. Her maiden name;

(Rule 1200-08-01-.07, continued)

3. Date of delivery;

4. Sex of infant;

5. Name of physician;

6. Names of persons assisting;

7. What complications, if any, occurred;

8. Type of anesthesia used;

9. Name of person administering anesthesia; and

10. Other persons present.

(8) Pediatric Services.

(a) If the hospital provides pediatric services, it shall provide appropriate pediatric equipment and supplies.

(b) Pediatric services must be appropriate to the scope and complexity of the services offered and must meet the needs of the patients in accordance with acceptable standards of practice.

(c) The hospital must have appropriate professional and non-professional personnel available to provide pediatric services.

(9) Respiratory Care Services.

(a) If the hospital provides respiratory care services, the hospital must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the respiratory care services must be appropriate to the scope and complexity of the services offered.

(c) There must be a director of respiratory care services who is a doctor of medicine or osteopathy with the knowledge, experience, and capabilities to supervise and administer the service properly.

(d) There must be adequate numbers of certified respiratory therapists, certified respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with state law.

(e) Services must be delivered in accordance with medical staff directives.

(f) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures must be designated in writing.

(g) If blood gases or other laboratory tests are performed in the respiratory care unit, the unit must meet the applicable requirements for clinical laboratory services specified in the Tennessee Medical Laboratory Act.

(10) Social Work Services.

(Rule 1200-08-01-.07, continued)

(a) If the hospital provides social work services, the services must be available to the patient, the patient's family and other persons significant to the patient, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(c) Social work services shall be provided by personnel who satisfy applicable accreditation standards and who are in compliance with Tennessee State Law governing social work practices. Social work personnel employed by the hospital prior to the effective date of these regulations shall be deemed to meet this requirement.

(d) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(11) Psychiatric Services.

(a) If a hospital provides psychiatric services, a psychiatric unit devoted exclusively for the care and treatment of psychiatric patients and professional personnel qualified in the diagnosis and treatment of patients with psychiatric illnesses shall be provided. Adequate protection shall be provided for patients and the staff against any physical injury resulting from a patient becoming violent. A psychiatric unit shall meet the requirements as needed to care for patients admitted, either through direct care or by contractual arrangements.

(b) A hospital licensed by the Department of Health as a satellite hospital whose primary purpose is the provision of mental health or mental retardation services, must verify to the Department that Standards of the Department of Mental Health and Mental Retardation are satisfied.

(12) Alcohol and Drug Services.

(a) If a hospital provides alcohol and drug services, the service shall be devoted exclusively to the care and treatment of alcohol and drug dependent patients and have on staff physicians and other professional personnel qualified in the diagnosis and treatment of alcoholism and drug addiction.

(b) Adequate protection shall be provided for the patients and staff against any physical injury resulting from a patient becoming disturbed or violent. Alcohol and drug services shall meet the requirements as needed to care for patients admitted, either through direct care or by contractual arrangements.

(13) Perinatal and/or Neonatal Care Services. Any hospital providing perinatal and/or neonatal care services shall comply with the Tennessee Perinatal Care System Guidelines for Regionalization, Hospital Care Levels, Staffing and Facilities developed by the Tennessee Department of Health's Perinatal Advisory Committee, June 1997 including amendments as necessary.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-57-101, 68-57-102, 68-57-104 and 68-57-105.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed June 12, 2003; effective August 26, 2003. Amendment filed July 27, 2005; effective October 10, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment*

(Rule 1200-08-01-.07, continued)
filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012.

1200-08-01-.08 BUILDING STANDARDS.

(1) A hospital shall construct, arrange, and maintain the condition of the physical plant and the overall hospital environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All new facilities shall conform to the 2006 edition of the International Building Code, except for Chapter 11 pertaining to accessibility and except for Chapter 27 pertaining to electrical requirements; the 2006 edition of the International Mechanical Code; the 2006 edition of the International Plumbing Code; the 2006 edition of the International Fuel and Gas Code; the 2006 edition of the National Fire Protection Code (NFPA) NFPA 1 including Annex A which incorporates the 2006 edition of the Life Safety Code; the 2010 Guidelines for Design and Construction of Health Care Facilities; the 2005 edition of the National Electrical Code; and the 2005 edition of the U.S. Public Health Service Food Code as adopted by the Board for Licensing Health Care Facilities. The requirements of the 2004 Americans with Disabilities Act (A.D.A.), and the 1999 edition of North Carolina Handicap Accessibility Codes with 2004 amendments apply to all new facilities and to all existing facilities that are enlarged or substantially altered or repaired after July 1, 2006. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes and regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

(4) A licensed contractor shall perform all new construction and renovations to hospitals, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in hospitals, including the submission of phased construction plans and the final drawings and the specifications to each.

(5) No new hospital shall be constructed, nor shall major alterations be made to an existing hospital without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new hospital is licensed or before any alteration or expansion of a licensed hospital can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

(6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.

(7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot (1/8" = 1'), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.

(Rule 1200-08-01-.12, continued)

(c) To refuse treatment. The patient must be informed of the consequences of that decision, the refusal and its reason must be reported to the physician and documented in the medical record;

(d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;

(e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The hospital must have policies to govern access and duplication of the patient's record;

(f) To have access to a phone number to call if there are questions or complaints about care;

(g) To have appropriate assessment and management of pain; and

(h) To be involved in the decision making of all aspects of their care.

(2) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendments filed September 6, 2005; effective November 20, 2005.*

1200-08-01-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each hospital shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(Rule 1200-08-01-.13, continued)

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

(Rule 1200-08-01-.13, continued)

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

6. any other adult who satisfies the requirements of 1200-08-01-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-01-.13(16)(c) thru 1200-08-01-.13(16)(g) is reasonably available, the

(Rule 1200-08-01-.13, continued)

designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-01-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(Rule 1200-08-01-.13, continued)

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-01-.13(20) thru 1200-08-01-.13(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-01-.13(20) thru 1200-08-01-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(Rule 1200-08-01-.13, continued)

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

(Rule 1200-08-01-.13, continued)

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the

(Rule 1200-08-01-.13, continued)

physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a

(Rule 1200-08-01-.13, continued)

minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed September 6, 2005; effective November 20, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-01-.14 DISASTER PREPAREDNESS.

(Rule 1200-08-01-.14, continued)

(1) Emergency Electrical Power.

(a) All hospitals must have one or more on-site electrical generators which are capable of providing emergency electrical power to at least all life sustaining equipment and life sustaining resources such as: ventilators; blood banks, biological refrigerators, safety switches for boilers, safety lighting for corridors and stairwells and other essential equipment.

(b) Connections shall be through a switch which shall automatically transfer the circuits to the emergency power source in case of power failure. (It is recognized that some equipment may not sustain automatic transfer and provisions will have to be made to manually change these items from a non-emergency powered outlet to an emergency powered outlet or other power source).

(c) The emergency power system shall have a minimum of twenty four (24) hours of either propane, natural gas, gasoline or diesel fuel. The quantity shall be based on its expected or known connected load consumption during power interruptions. In addition, the hospital shall have a written contract with an area fuel distributor which guarantees first priority service for re-fills during power interruptions.

(d) The emergency power system shall be inspected weekly and exercised and under actual load and operating temperature conditions for at least thirty (30) minutes, once each month. Records shall be maintained for all inspections and tests and kept on file for a minimum of three (3) years.

(2) Physical Facility and Community Emergency Plans.

(a) Physical Facility (Internal Situations).

1. Every hospital shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills.

2. The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Plans that provide for the relocation of patients to other health care facilities must have written agreements for emergency transfers. Their agreements may be mutual, i.e. providing for transfers either way.

3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to all staff. Provisions that have security implications may be omitted from the outline versions. Familiarization information shall be included in employee orientation sessions and more detailed instructions must be included in continuing education programs. Records of orientation and education programs must be maintained for at least three (3) years.

4. Drills of the disaster preparedness plan shall be conducted at least once a year. The risk focus may vary by type of drill. Drills are for the purpose of educating staff, resource determination, testing personal safety provisions and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.

(Rule 1200-08-01-.14, continued)

5. As soon as possible, real situations that result in a response by local authorities must be documented. This includes a critique of the activation of the plan. Actual documented situations that had education and training value may be substituted for a drill.

(b) Community Emergency (Mass Casualty).

1. Every hospital, unless exempted due to its limited scope of clinical services, shall have a plan that provides for the reception and treatment, within its capabilities, of medical emergencies resulting from a disaster within its usual service area. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".

2. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed. The plan must also include for the deferral of elective admission patients and also for the early transfer or discharge of some current patients if it appears that the number of casualties will exceed available staffed beds.

3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to staff who would be assigned non-routine duties during these types of emergencies. Familiarization information shall be included in employee orientation sessions and more detailed instruction must be included in continuing education programs. Records of orientation and education must be maintained for at least three (3) years.

4. At least one drill shall be conducted each year for the purpose of educating staff, resource determination, and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.

5. As soon as possible, actual community emergency situations that result in the treatment of more than twenty (20) patients, or fifteen percent (15%) of the licensed bed capacity, whichever is less, must be documented. Actual situations that had education and training value may be substituted for a drill. This includes documented actual plan activation during community emergencies, even if no patients are received.

(c) Emergency Planning with Local Government Authorities.

1. All hospitals shall establish and maintain communications with the county Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

2. Each hospital must rehearse both the Physical Facility and Community Emergency plan as required in these regulations, even if the local Emergency Management Agency is unable to participate.

3. A file of documents demonstrating communications and cooperation with the local agency must be maintained.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000.*

1200-08-01-.15 APPENDIX I

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

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

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(Rule 1200-08-01-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is: (Must be completed)** ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-01-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-01-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-01-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-01-.15, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

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

Please sign on page 2

(Rule 1200-08-01-.15, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____ _____
Signature of Notary Public

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)

(Rule 1200-08-01-.15, continued)

- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-02
STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

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1200-08-02-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2)~~(1)~~ Administrator. The individual designated by the licensee or the governing body to be the person responsible for the day to day supervision and operation of the PCCC and may be either the licensee or the nursing director.

(3)~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4)~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5)~~(4)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6)~~(5)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(7)~~(6)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(8)~~(7)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary function in a child, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a child where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9)~~(8)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

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

(10)~~(9)~~ Certified Nurse Practitioner. A person who is licensed as a registered nurse and has further been issued a certificate of fitness to prescribe and/or issue drugs by the Tennessee Board of Nursing.

(11)~~(10)~~ Certified Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(12)~~(11)~~ Child or Children. A person or persons under 18 years of age.

(13)~~(12)~~ Child Care. The provision of supervision, protection, and meeting, at a minimum, the basic needs of a child for three (3) or more hours a day, but less than twenty-four (24) hours a day.

(14)~~(13)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(15)~~(14)~~ Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(16)~~(15)~~ Department. The Tennessee Department of Health.

(17)~~(16)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(18)~~(17)~~ Developmentally Appropriate. As defined by the National Association for the Education of Young Children, developmentally appropriate practice is the use of child development knowledge to identify the range of appropriate behaviors, activities and materials for a specific age group. This knowledge is used in conjunction with understanding about an individual child's growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. Developmentally appropriate curriculum provides for all areas of a child's development: physical, emotional, social, and cognitive through an integrated approach.

(19)~~(18)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners.

~~(19) Do Not Resuscitate (DNR) Order. For purposes of this chapter, an order entered by the child's treating physician, in consultation with the parent, in the child's medical record which states that in the event the child suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(20) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(21)~~(20)~~ Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(22)~~(21)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(23)~~(22)~~ Emergency. Any situation or condition which presents an imminent danger of death or serious physical or mental harm to children.

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

(24)~~(23)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(25)~~(24)~~ Functional Assessment. An evaluation of the child's abilities and needs related to self care, communication skills, social skills, motor skills, pre-academic areas, play with toys/objects, growth and development appropriate for age.

(26)~~(25)~~ Group. A specific number of children comprising an age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distractions.

(27)~~(26)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(28)~~(27)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(29)~~(28)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(30)~~(29)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(31)~~(30)~~ Health Care Decision-maker. In the case of an individual who lacks capacity, the individual's health care decision-maker is one of the following: the individual's health care agent as specified in an advance directive, the individual's court-appointed guardian or conservator with health care decision-making authority, the individual's surrogate as determined pursuant to Rule 1200-08-02-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(32)~~(31)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(33)~~(32)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.

(34)~~(33)~~ High School Diploma. As used in the context of staff qualifications, refers to a document recognizing graduation from a legally approved institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as a high school diploma.

(35)~~(34)~~ Holding Out to the Public. Advertising or soliciting the public through the use of personal, telephone, mail or other forms of communication to provide information about services provided by the facility.

(36)~~(35)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(37)~~(36)~~ Infant. A child who is six (6) weeks through fifteen (15) months of age.

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

(38)~~(37)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(39)~~(38)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(40)~~(39)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(41)~~(40)~~ Licensed Practical Nurse. A person currently licensed as such by Tennessee Board of Nursing.

(42)~~(41)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the child's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part, which includes labor when delivery is imminent, when there is inadequate time to effect safe transfer to a hospital prior to delivery, or when a transfer may pose a threat to the health and safety of the child or the unborn child.

(43)~~(42)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(44)~~(43)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(45)~~(44)~~ Mid-Level Practitioner. A certified nurse practitioner or a licensed physician assistant.

(46) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(47) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(48)~~(45)~~ N.F.P.A. The National Fire Protection Association.

(49)~~(46)~~ Nursing Director. A licensed registered nurse providing continuous supervision of PCCC services and managing the operations of the facility.

(50)~~(47)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(51)~~(48)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

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

(52)~~(49)~~ Optometrist. A person currently licensed as such by the Tennessee Board of Optometry.

(53)~~(50)~~ Parent. A biological, legal or adoptive parent, guardian, or a legal or physical custodian who has primary responsibility for a child.

(54)~~(51)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(55)~~(52)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(56)~~(53)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(57)~~(54)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(58)~~(55)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(59)~~(56)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

~~(57) Physician Assistant. A person who is licensed by the Tennessee Board of Medical Examiners and Committee on Physician Assistants and has prescription writing authority pursuant to T.C.A. 63-19-107(2)(A).~~

(60) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(61) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(62)~~(58)~~ Plan of Care. The comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided upon admission and shall include necessary equipment to meet the child's need, and the plan will be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations will be specified in the Plan of Care.

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

(63)~~(59)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(64)~~(60)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(65)~~(61)~~ Prescribed Child Care Center (PCCC). A nonresidential child care, health care/child care center providing physician prescribed services and appropriate developmental services for six (6) or more children who are medically and/or technology dependent and require continuous nursing intervention. Child care for purposes of this section means the provision of supervision, protection, and meeting the basic needs of children, who are not related to the primary caregivers, for three (3) or more hours a day, but less than twenty-four (24) hours a day. As part of the continuum of care for medically dependent children, the center provides a triad of medically necessary services: skilled nursing care, developmental programming, and parental training. Prescribed child care (PCCC) provides a less restrictive alternative to hospitalization and reduces the isolation often experienced by the homebound, medically dependent child and family. The purpose of prescribed childcare is health care, but does not exclude other services.

(66)~~(62)~~ Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(67)~~(63)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(68)~~(64)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the child's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(69)~~(65)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(70)~~(66)~~ Registered Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(71)~~(67)~~ Shall or Must. Compliance is mandatory.

(72)~~(68)~~ Social Worker. A person who has at least a bachelor's degree in Social Work or related field, and preferably, two (2) years medical social work or other community based work experience.

(73)~~(69)~~ Speech Pathologist. A person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(74)~~(70)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(75)~~(71)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(76)~~(72)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

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

(77)~~(73)~~ Toddler. A child who is sixteen (16) months through thirty (30) months of age.

(78)~~(74)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the child.

~~(75) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed July 3, 1984; effective August 1, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 1, 1992; effective May 16, 1992. Amendment filed January 6, 1995; effective March 22, 1995. Repeal filed March 18, 2000; effective May 30, 2000. New rule filed June 13, 2002; effective August 27, 2002. Amendment filed May 16, 2006; effective July 30, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-02-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any Prescribed Child Care Center (PCCC) without having a license. A license shall be issued only to the applicant named and for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the PCCC.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license, with the exception of the U.S. Government, the State of Tennessee or local government, shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. No child shall be admitted to the PCCC until a license has been issued. Applicants shall not hold themselves out to the public as being a PCCC until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by T.C.A. §68-11-206(a)(1), or as later amended, and of all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the prescribed child care center to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

1200-08-02-.11 CHILD, PARENT OR RESPONSIBLE PARTY'S RIGHTS.

(1) The PCCC shall demonstrate respect and support for each child's rights. The facility insures each child receives professional and humanistic services in a manner that protects their fundamental human, civil, constitutional and statutory rights.

Policies and procedures shall be developed, approved, and maintained to ensure consistent application and communication throughout the organization.

(a) The following rights of children and parents shall apply whenever appropriate:

1. Impartial access to treatment or accommodations that are available or medically indicated regardless of race, creed, sex, national origin, or sources of payment for care.

2. Considerate, respectful care at all times and under all circumstances, with recognition of his/her personal dignity, values and beliefs.

3. Identity and professional status of individuals providing services to the child and to know who is primarily responsible for the child's care or treatment.

4. Expectation of reasonable safety insofar as family practices and environment are concerned.

5. Confidentiality of child's records.

6. Ability to voice complaints regarding care without fear of discrimination or compromising their child's future care.

7. The parent may direct a determination which encompasses the right to make choices regarding life sustaining treatment, including resuscitative services.

8. Information about fee schedules and payment policies.

9. Environment conducive to personal and informational privacy.

(b) Children shall not be abused, neglected, or administered corporal punishment.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002.*

1200-08-02-.12 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each prescribed child care center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a child who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual children. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the

(Rule 1200-08-02-.12, continued)

agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the child by blood, marriage, or adoption and would not be entitled to any portion of the estate of the child upon the death of the child. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(Rule 1200-08-02-.12, continued)

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

6. any other adult who satisfies the requirements of 1200-08-02-.12(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

(Rule 1200-08-02-.12, continued)

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the child lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-02-.12(16)(c) thru 1200-08-02-.12(16)(g) is reasonably available, the designated physician may make health care decisions for the child after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the child's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-02-.12(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

(Rule 1200-08-02-.12, continued)

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-02-.12(20) thru 1200-08-02-.12(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-02-.12(20) thru 1200-08-02-.12(22) shall:

(Rule 1200-08-02-.12, continued)

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

(Rule 1200-08-02-.12, continued)

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

(Rule 1200-08-02-.12, continued)

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse

(Rule 1200-08-02-.12, continued)

practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002. Repeal and new rule filed May 16, 2006; effective July 30, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-02-.13 DISASTER PREPAREDNESS.

(1) The administrator of every PCCC shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans, for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff's signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans shall be readily available at all times in the telephone operator's position or at the security center. Each of the following plans shall be exercised annually prior to the month listed in each plan:

(a) Fire Safety Procedures Plan (to be exercised at any time during the year) shall include:

1. Minor fires;

2. Major fires;

3. Fighting the fire;

4. Evacuation procedures; and,

5. Staff functions by department and job assignment.

(b) Tornado/Severe Weather Procedures Plan shall include:

1. Staff duties by department and job assignment; and,

2. Evacuation procedures.

(c) Bomb Threat Procedures Plan (to be exercised at anytime during the year) shall include:

1. Staff duties;

2. Search team, searching the premises;

3. Notification of authorities;

4. Location of suspicious objects; and,

5. Evacuation procedures.

(d) Floods Procedures Plans, if applicable, shall include:

1. Staff duties;

2. Evacuation procedures; and

3. Safety procedures following the flood.

(e) Severe Cold Weather and Severe Hot Weather Procedures Plans shall include:

1. Staff duties;

(Rule 1200-08-02-.13, continued)

2. Equipment failures;

3. Insufficient HVAC on emergency power;

4. Evacuation procedures; and

5. Emergency food service.

(f) Earthquake Disaster Procedures Plan shall include:

1. Staff duties;

2. Evacuation procedures;

3. Safety procedures; and,

4. Emergency services;

(2) All facilities shall participate in the Tennessee Emergency Management local/county emergency plan on an annual basis. Participation includes but is not limited to filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation shall be maintained and shall be made available to survey staff as proof of participation.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002.*

Appendix A

Vehicle Safety Check
Preventive Maintenance Check List

Vehicle No. _____ Facility _____

Use one column per day; write date in shaded area. Check each item (T) if OK, (0) if item needs attention, and (x) if deficiency is corrected. Note any defects and/or corrections at the bottom of sheet. In addition, defects are to be reported to your supervisor.

Exterior ↓ / Date → Checked										
Tires										
Turn Signals										
Body (cleanliness)										
Head Lights										
Mirrors										
Wipers										
Body (dents)										

(Rule 1200-08-02-.13, continued)

Interior ↓										
Brakes										
Steering										
Safety Equipment										
Dash Gauges										
Seat Belts										
Cleanliness										
Body (dents)										

Under Hood ↓										
Oil										
Coolant										
Transmission Fluid										
W/W Fluid										
Belts/Hoses										
Brake Fluid										
Amount of Gas Added										
Mileage										
Driver initials										

Defects/Maintenance performed: _____

Remarks: _____

Appendix B

Playground Surfacing

(1) Playground Surface Materials

(a) A variety of surfaces on the playground provides flexibility and visual interest as well as enjoyment and learning experiences for children. Various play activities require or are facilitated by different surfaces. For example, concrete, asphalt, or hard-packed dirt are better than grass or sand for trike riding and hopscotch; while sand, pebbles, dirt or other "fluid" material are necessary for manipulative activities such as digging or pouring.

(b) Climbers, swings and other equipment which can take a child's feet off the ground are in a "fall zone." A fall of even six (6)" can cause injury to a small child. The fall-zone area under and around equipment where children might fall and be injured shall be covered with impact-absorbing materials which will effectively cushion the fall of a child. According to the Consumer Product Safety Commission (which is mentioned in these standards for additional guidance), falls from equipment onto a hard surface account for 60% to 70% of playground related injuries, and injuries from falls are responsible for over half of all deaths of children after infancy.

(Rule 1200-08-02-.13, continued)

(c) Tricycles and other children's vehicles are not included in this fall-zone rule, although consideration should be given to placing tricycle tracks within a resilient area and/or providing helmets.

(d) Before the variety of materials is examined, another hazard should be considered. In landscaping a play area for children, make certain no poisonous plants, bushes, or grasses are used. The Department has a list of plants to avoid, or consult with your local Poison Control Center if in doubt. (A nursery may not be reliable since nurseries are not accustomed to that question.)

(e) Whether loose-fill material or a "unitary" covering is chosen as a resilient surface, it should extend far enough to cover the fall zone, or at least 4 feet and preferably six (6) feet from all sides or perimeters of equipment where children could fall or be propelled (e.g., from arc of swing or exit end of slide).

(f) Some surface materials are listed below, with advantages and disadvantages of each given, along with acceptable depth requirements. The range of depths is based on height of equipment in fall zone: the taller the equipment, the more resiliency needed. (Sources for this information are the Consumer Product Safety Commission's 1992 "Handbook for Public Playground Safety" and "Caring for Our Children", American Public Health Association/American Academy of Pediatrics [1992]). Administrators are advised to follow guidelines in one of these publications for construction, renovation and maintenance of playgrounds and playground equipment.) Other materials are not precluded; if another material is chosen, use the suggested depth for a similar material (e.g., if cocoa mulch is chosen, use the greatest depth given for wood mulch).

(2) Natural/Loose-Fill Materials

Note: Most are not easily accessible to wheel chairs.

(a) Grass: Provides color and soft appearance to play area, esthetically pleasing. High maintenance. Wears off in high-traffic areas, leaving mud or hard-packed dirt; therefore, unacceptable as a resilient surface under climbers and swings.

(b) Coarse sand: Dries fairly quickly (if good drainage system), good for manipulative activities (pouring, sifting, moving), is easily raked. (Sand play area must be apart from sand area around equipment. Sand play area must be covered when not in use and cleaned occasionally.) Depth: 6" min./Eqt. ht: 5 ft.; 12" min./Eqt. ht.: 6 ft. Moderate to high maintenance required because of need to rake when displaced and to clean occasionally. Can cause small cuts and possible eye injury if thrown. CPSC Handbook makes distinction among fine, medium, and coarse.

(c) Pea gravel: Drains well, can be played on immediately after rain, suitable for manipulative activities (in protected area away from equipment). Medium size is best (small size can be lodged in ears and noses, large size could cause injury if thrown and is difficult to walk on.) Scatters easily, not recommended for slopes. Depth: 6" to 12" depending on height of equipment. Low maintenance. Must be raked when displaced. Use caution when selecting; must be smooth "river rock."

(d) Rubber mulch: A newer product (untested as of this printing). Provides acceptable resiliency at 6" depth, drains well. Some types leave black marks or dust on skin and clothing. Some objection to heat generated by the sun and its combustibility. Low maintenance. Must be raked when displaced.

(Rule 1200-08-02-.13, continued)

(e) Sawdust: Inexpensive and drains well when new. High maintenance, requiring a large amount for acceptable resiliency because it scatters easily and must be raked often; must be replaced often because of deterioration. Untested.

(f) Wood chips: Drain fairly well. Better drainage provided if placed over sand/dirt combination (perhaps with gravel/dirt layered system). Easily scattered, requiring occasional raking. Depth: 6" to 12" depending on height of equipment. Check for splintering. Rots, needing replacement. Moderate maintenance.

(g) Wood mulch: See wood chips for drainage information. Packs down, requiring raking. Less abrasive than sand. Depth: 6" to 12", depending on height of equipment. Rots, needing replacement on at least annual basis. Moderate to high maintenance.

(3) Unitary Products

These are of solid construction, usually rubber or rubber composition over foam mats or tiles, or they may be "poured." The CPSC "Handbook for Public Playground Safety" (1992 ed.) reads:

"Unitary materials are available from a number of different manufacturers many of whom have a range of materials with differing shock absorbing properties. Persons wishing to install a unitary material as a playground surface should request test data from the manufacturer that should identify the Critical Height of the desired material. In addition, site requirements should be obtained from the manufacturer because some unitary materials require installation over a hard surface while for others this is not required."

Their advantages are their low or no maintenance feature, consistent shock absorbency, wheelchair accessibility, and good footing. The primary disadvantage is the initial high cost; however, most are guaranteed for 5 years but may last longer. Some need to be installed by a professional--some on concrete, some on a level dirt/sand surface. (For more information, see CPSC Handbook.)

Artificial turf should not be used on playgrounds because of its lack of conformity to CPSC standards and because it causes carpet-type burns on falls.

Appendix C

Immunization and TB Requirements

In addition to the rules in Section 1200-08-02-.10, these rules are also required of prescribed child care centers.

(1) Immunization Rules

(a) Age-appropriate immunization against the following diseases is required for every child nine (9) weeks of age and above: diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, haemophilus influenza type B, and hepatitis B (and such vaccines and medications as deemed appropriate by the Department of Health in the event of a disease outbreak).

(b) Records of children shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of tuberculosis screening.

(Rule 1200-08-02-.13, continued)

(2) Requirements For Tuberculosis Screening Of Child Care Populations

PCCCs that provide care for periods of less than twenty-four (24) hours per day shall comply with the following health regulations relating to tuberculosis control:

(a) Staff

1. It is preferable that staff be screened for tuberculosis within 90 days prior to employment. However, if the situation dictates immediate hire, the staff person shall be screened for signs and symptoms of TB and obtain a mantoux tuberculin skin test no later than two (2) weeks after employment.

2. In immediate hire situations, a TB Screening Inventory shall be completed on the staff person (see attached form entitled "Child Care Staff: Tuberculosis Screening Inventory). If the results of the screening inventory are negative, the staff person may begin work while awaiting the outcome of the mantoux tuberculin skin test. If the results of the screening inventory indicate the likelihood of a positive TB infection, the applicant shall be evaluated by a physician prior to beginning employment. This evaluation may include a chest x-ray and if necessary, other specific tests. If the results of the mantoux tuberculin skin test are positive, the employee shall be evaluated by a physician prior to continuing employment. Persons requiring an evaluation by a physician shall provide documentation indicating that they are free of infectious tuberculosis.

3. Prospective or current staff who are known to have positive tuberculosis reaction shall receive a chest x-ray to rule out infectious tuberculosis. No x-ray is required for persons with documentation of completed preventive therapy. Screening for signs and symptoms of TB shall occur periodically.

(b) Children

1. Foreign-born

All foreign-born children shall present evidence of tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

2. Native-born

Special screening of children born in the United States is not required unless there is a history of contact to tuberculosis or there are symptoms and/or physical findings suggestive of tuberculosis. If symptoms are present, the child shall be evaluated by a physician. Such children shall provide documentation indicating that they are free of infectious tuberculosis.

Child Care Staff
Tuberculosis Screening Inventory

Note: This inventory is not a self-evaluation. This form is to be completed by PCCC administrative personnel.

Name:_____ Status: (circle one:) Applicant Employee

(Rule 1200-08-02-.13, continued)
Any child care applicant/employee with the following symptoms should be evaluated promptly for TB:

_____ persistent cough (i.e., a cough lasting three weeks or more), especially in the presence of other signs or symptoms compatible with active TB such as:

_____ weight loss
_____ night sweats
_____ bloody sputum
_____ anorexia
_____ fever

If the above symptoms are indicated, the individual should not begin or continue employment until a diagnosis of TB has been excluded or until the person is on therapy and a determination has been made that the individual is noninfectious.

Inventory Results:

_____ indicated - medical confirmation of noninfectious status required

_____ not indicated - no further action necessary

Signature:_____

Date Completed:_____

Medical Confirmation:

_____ confirmation of noninfectious status received

Signature:_____

Date Received:_____

1200-08-02-.14 APPENDIX I

Appendix I

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

~~(This space intentionally left blank)~~

(Rule 1200-08-02-.14, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ Resuscitate (CPR) ☐ Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. Transfer to hospital if indicated. Avoid intensive care. ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. Transfer to hospital if indicated. Include intensive care. *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ No Antibiotics ☐ Antibiotics *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ No IV fluids (provide other measures to assure comfort) ☐ No feeding tube ☐ IV fluids for a defined trial period ☐ Feeding tube for a defined trial period ☐ IV fluids long-term if indicated ☐ Feeding tube long-term *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-02-.14, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-02-.14, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A Check One Box Only

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B Check One Box Only

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C Check One

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D Must be Completed

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	Physician/NP/CNS/PA Signature Date NP/CNS/PA (Signature at Discharge)	MD/NP/CNS/PA Phone Number:

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

Agent/Surrogate	Relationship	Phone Number

Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

(Rule 1200-08-02-.14, continued)

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

(Rule 1200-08-02-.14, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

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

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

Please sign on page 2

(Rule 1200-08-02-.14, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires:_____

_____
Signature of Notary Public

(Rule 1200-08-02-.14, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-06
STANDARDS FOR NURSING HOMES

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1200-08-06-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Administrator. A person currently licensed as such by the Tennessee Board of Examiners for Nursing Home Administrators.

(3) ~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) ~~(5)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(7) ~~(6)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(8) ~~(7)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

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

(9) ~~(8)~~ Certified Nurse Aide or Certified Nursing Assistant. An individual who has successfully completed an approved nursing assistant training program and is registered with the department.

(10) ~~(9)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(11) ~~(10)~~ Competent. A resident who has capacity.

(12) ~~(11)~~ Department. The Tennessee Department of Health.

(13) ~~(12)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(14) ~~(13)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. § 63-25-104.

(15) ~~(14)~~ Director of Nursing (DON). A Registered Nurse employed full time in a nursing home who satisfies the responsibilities set forth in this chapter.

~~(15) Do Not Resuscitate (DNR) Order. An order entered by the resident's treating physician in the resident's medical record which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(16) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(17) ~~(16)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(18) ~~(17)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(19) ~~(18)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(20) ~~(19)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(21) ~~(20)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(22) ~~(21)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(23) ~~(22)~~ Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or

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

conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-06-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(24) ~~(23)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(25) ~~(24)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(26) ~~(25)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(27) ~~(26)~~ Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such person, and maternity care involving labor and delivery for any period of time.

(28) ~~(27)~~ Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(29) ~~(28)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(30) ~~(29)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(31) ~~(30)~~ Involuntary Transfer. The movement of a resident between nursing homes, without the consent of the resident, the resident's legal guardian, next of kin or representative.

(32) ~~(31)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(33) ~~(32)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(34) ~~(33)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(35) ~~(34)~~ Medical Director. A licensed physician employed by the nursing home to be responsible for medical care in the facility.

(36) ~~(35)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

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

(37) ~~(36)~~ Medical Equipment. Equipment used for the diagnosis, treatment and monitoring of patients, including, but not limited to, oxygen care equipment and oxygen delivery systems, enteral and parenteral feeding pumps, and intravenous pumps.

(38) ~~(37)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to residents.

(39) ~~(38)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

(40) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(41) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(42) ~~(39)~~ NFPA. The National Fire Protection Association.

(43) ~~(40)~~ Nurse Aide or Nursing Assistant Training Program. A specialized program approved by the Department to provide classroom instruction and supervised clinical experience for individuals who wish to be employed as Nurse Aides or Nursing Assistants.

(44) ~~(41)~~ Nursing Personnel. Licensed nurses and certified nurse aides who provide nursing care.

(45) ~~(42)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(46) (43) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.

(47) ~~(44)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(48) ~~(45)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

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

(49) ~~(46)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(50) ~~(47)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(51) ~~(48)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(52) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(53) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(54) ~~(49)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(55) ~~(50)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(56) ~~(51)~~ Program Coordinator. A registered nurse who possesses a minimum of two years nursing experience with at least one year in long term care and is responsible for ensuring that the requirements of the Nurse Aide Training Program are met.

(57) ~~(52)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(58) ~~(53)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(59) ~~(54)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

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

(60) ~~(55)~~ Resident/Patient. Includes but is not limited to any person who is suffering from an illness or injury and who is in need of nursing care.

(61) ~~(56)~~ Secured Unit. A facility or distinct part of a facility where residents are intentionally denied egress by any means.

(62) ~~(57)~~ Shall or Must. Compliance is mandatory.

(63) ~~(58)~~ Social Worker. In a facility with more than 120 beds a qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and,

(b) One year of supervised social work experience in a health care setting working directly with individuals.

(64) ~~(59)~~ Speech Therapist. A person currently licensed as such by the Tennessee Board of Communication Disorders and Sciences.

(65) ~~(60)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(66) ~~(61)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(67) ~~(62)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(68) ~~(63)~~ Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(69) ~~(64)~~ Survey. An on-site examination by the department to determine the quality of care and/or services provided.

(70) ~~(65)~~ Transfer. The movement of a resident between nursing homes at the direction of a physician or other qualified medical personnel when a physician is not readily available. The term does not include movement of a resident who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons, the discharge or release of a resident no longer in need of nursing home care, or a nursing home's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for nursing home care.

(71) ~~(66)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

(72) ~~(67)~~ Treating Physician. The physician selected by or assigned to the resident and who has the primary responsibility for the treatment and care of the resident. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

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

~~(68) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

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

1200-08-06-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local governmental unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any nursing home without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Satellite facilities shall be prohibited. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the nursing home.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form provided by the department along with a copy of the Certificate of Need (CON) issued by the Tennessee Health Services and Development Agency (HSDA). Any condition placed on the CON will also be placed on the license.

(b) Each applicant for a license shall pay an annual license fee based on the number of nursing home beds. The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the nursing home until a license has been issued. Applicants shall not hold themselves out to the public as being a nursing home until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(e) The applicant shall allow the nursing home to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new

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

least restrictive response feasible. They may be time-limited, shall be explained to the resident, and must be documented in the individual resident's record by reciting the limitation's reason and scope. Medical contraindications shall be supported by a physician's order. At least once each month, the administrator and the director of nursing shall review the restriction's justification and scope before removing it, amending it, or renewing it. The names of any residents in the facility whose rights have been restricted under the provisions of this rule shall be maintained on a separate list which shall be available for inspection by the department and by the area long-term care ombudsman.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-901, and 68-11-902.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed May 24, 2985; effective June 23, 1985. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed May 10, 1990; effective June 24, 1990. Amendment filed March 9, 1992; effective April 23, 1992. Amendment filed March 10, 1995; effective May 24, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed September 21, 2005; effective December 5, 2005.*

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

(1) Pursuant to this Rule, each nursing home shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be

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

made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:

1. the resident has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

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

(c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.

(d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the resident's spouse, unless legally separated;

2. the resident's adult child;

3. the resident's parent;

4. the resident's adult sibling;

5. any other adult relative of the resident; or

6. any other adult who satisfies the requirements of 1200-08-06-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;

2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the resident during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-06-.13(16)(c) thru 1200-08-06-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

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

2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-06-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

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

(c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.

(19) Except as provided in 1200-08-06-.13(20) thru 1200-08-06-.13(22), a health care provider or institution providing care to a resident shall:

(a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and

(b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-06-.13(20) thru 1200-08-06-.13(22) shall:

(a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;

(b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

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

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

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

~~(b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the

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

provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be

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

resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

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

1200-08-06-.14 DISASTER PREPAREDNESS.

(1) Emergency Electrical Power.

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

(a) All nursing homes must have one or more on-site electrical generators which are capable of providing emergency electrical power to at least all life sustaining equipment and life sustaining resources such as: ventilators, blood banks, biological refrigerators, safety switches for boilers, safety lighting for corridors and stairwells, and other essential equipment.

(b) Connections shall be through a switch which shall automatically transfer the circuits to the emergency power source in case of power failure. It is recognized that some equipment may not sustain automatic transfer and provisions will have to be made to manually change these items from a non-emergency powered outlet to an emergency powered outlet or other power source. All emergency power transfer switches shall be labeled as such. Switches affecting heat, ventilation, and all systems shall be labeled.

(c) The emergency power system shall have a minimum of twenty four (24) hours of either propane, gasoline or diesel fuel. The quantity shall be based on its expected or known connected load consumption during power interruptions. In addition, the nursing home shall have a written contract with an area fuel distributor which guarantees first priority service for re-fills during power interruptions.

(d) The emergency power system (generator) shall be inspected weekly and exercised under actual load and operating temperature conditions for at least thirty (30) minutes, once each month, including automatic and manual transfer of equipment. The generator shall be exercised by trained facility staff who are familiar with the systems operation. Instructions for the operation of the systems and the manual transfer of emergency power shall be maintained with the facility's disaster preparedness plan and shall be separately identified in the plan. Records shall be maintained for all weekly inspections and monthly tests and be kept on file for a minimum of three (3) years.

(2) Physical Facility and Community Emergency Plans.

(a) Physical Facility (Internal Situations).

1. Every nursing home shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".

2. The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Facilities which do not have sufficient emergency generator capacity to provide a place of refuge for residents during severe hot or cold weather emergencies shall specifically establish an emergency plan to assure a common area (dining room, hallway, or day rooms) is heated or cooled sufficiently to sustain residents during an emergency. This can be accomplished through several approaches including the installation of a transfer switch at the facility to which an emergency generator may be connected to operate a HVAC system for the place of refuge, or transportation of a generator to the facility and direct connection from the generator to emergency portable heating or cooling units. The plan must be coordinated with local emergency management agencies that provide emergency generators or heating or cooling units; and facilities are encouraged to enter into private agreements with local generator suppliers, rental agencies or other reliable sources of emergency power. Plans that provide for the relocation of residents to other health care facilities must have written agreements for emergency transfers. The agreements may be mutual, i.e. providing for transfers either way.

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

3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to all staff. A copy shall be readily available at all times in the telephone operator's position or at the security center. Provisions that have security implications may be omitted from the outline versions. Familiarization information shall be included in employee orientation sessions and more detailed instructions must be included in continuing education programs. Records of orientation and education programs must be maintained for at least three (3) years.

4. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed.

5. Each of the following disaster preparedness plans shall be conducted annually prior to the month listed in the plan. Drills are for the purpose of educating staff, resource determination, testing personnel safety provisions and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.

(i) Fire Safety Procedures Plan, to be exercised at any time during the year, shall include:

(I) Minor fires;

(II) Major fires;

(III) Fighting the fire;

(IV) Evacuation procedures;

(V) Staff functions by department and job assignment; and,

(VI) Fire drill schedules (fire drills shall be held at least quarterly on each work shift).

(ii) External disaster procedures plan (for tornado, flood, earthquake), to be exercised prior to March, shall include:

(I) Staff duties by department and job assignment; and,

(II) Evacuation procedures.

(iii) Bomb Threat Procedures Plan, to be exercised at any time during the year:

(I) Staff duties by department and job assignment; and,

(II) Search team, searching the premises.

6. The nursing home shall develop and periodically review with all employees a prearranged plan for the orderly evacuation of all residents in case of a fire, internal disaster or other emergency. The plan of evacuation shall be posted throughout the home. Fire drills shall be held at least quarterly for each work shift for nursing home personnel in each separate patient-occupied nursing home building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which

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

document and evaluate these drills must be maintained for at least three (3) years.

(b) Community Emergency (Mass Casualty).

1. Every nursing home, unless exempted due to its limited scope of clinical services, shall have a plan that provides for the reception and treatment, within its capabilities, of medical emergencies resulting from a disaster within its usual service area. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".

2. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed. The plan must also provide for the deferral of elective admission patients and also for the early transfer or discharge of some current patients if it appears that the number of casualties will exceed available staffed beds.

3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to staff who would be assigned non-routine duties during these types of emergencies. Familiarization information shall be included in employee orientation sessions and more detailed instruction must be included in continuing education programs. Records of orientation and education must be maintained for at least three (3) years.

4. At least one drill shall be conducted each year for the purpose of educating staff, resource determination, and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.

5. As soon as possible, actual community emergency situations that result in the treatment of more than twenty (20) patients, or fifteen percent (15%) of the licensed bed capacity, whichever is less, must be documented. Actual situations that had education and training value may be substituted for a drill. This includes documented actual plan activation during community emergencies, even if no patients are received.

(c) Emergency Planning with Local Government Authorities.

1. All nursing homes shall establish and maintain communications with the county Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

2. Each nursing home must rehearse both the Physical Facility and Community Emergency plan as required in this rule, even if the local Emergency Management Agency is unable to participate.

3. A file of documents demonstrating communications and cooperation with the local agency must be maintained.

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

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

(1) Testing service.

(a) The Department shall provide or contract for the provision of nurse aide testing services as follows:

1. Annual publication of testing schedules and sites.

2. Test sites shall be located so that no individual is required to drive farther than thirty (30) miles to reach a test site.

3. Scheduled tests shall be administered, except when no individual is scheduled to test at a particular test site.

4. The number of individuals passing and failing shall be published following each test.

5. The minimum passing grade for each test shall be seventy-five percent (75%) for the written or oral component. The performance demonstration portion of the test shall consist, at minimum, of five performance tasks, which shall be selected randomly for each registrant from a pool of skills evaluation tasks ranked according to degree of difficulty, with at least one task selected from each degree of difficulty. Registrants are required to pass a minimum of five (5) performance tasks.

6. Individuals who fail any portion of the test three (3) consecutive times shall repeat training prior to taking the test again.

(b) Applications to take the test shall be sent by the program coordinator to the appropriate testing agency postmarked no later than thirty (30) days prior to the test date. Requests for special testing needs shall be made to the testing agency at this time.

(c) The department shall provide the board with quarterly reports on the number of individuals passing and failing each test.

(d) A practical and written test will be developed to reflect that a trainee has acquired the minimum competency skills necessary to become a competent and qualified nurse aide. The Nurse Aide Advisory Committee, composed of twelve (12) members with at least three (3) members nominated by the Tennessee Health Care Association, will periodically review testing materials and set criteria for survey visits of the nurse aide programs.

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

(2) Training program.

(a) Requests for approval of a nurse aide training program shall be submitted to the department and shall include the following:

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

1. Name, address and telephone number of the facility, institution or agency offering the program;

2. The program coordinator's name, address, license number and verification of a minimum of two (2) years nursing experience, at least one of which must be in the provision of long-term care facility services;

3. Statement of course objectives;

4. Description of course content specifying the number of hours to be spent in the classroom and in clinical settings; and,

5. In lieu of (3) and (4) above, the fact that the curriculum is previously department-approved.

(b) Notification of any change to any one of the above five (5) items or termination of the program must be submitted to the department within 30 days.

(c) Each training program shall have a pass rate on both written and performance exams of at least 70%. Annual reviews of Nurse Aide Training Programs shall include:

1. Letter of commendation for exceptional pass rate as evaluated by the department;

2. Letter of concern for programs having one year of test pass rates below 70%;

3. Request for plan of program improvement for programs with two consecutive years of test pass rates below 70%;

~~4. Request to appear before the Board for programs with two consecutive years of test pass rates below 70%; and~~

4. After the third year of consecutive test pass rates below seventy-percent (70%), the program shall be closed for no less than twenty-four (24) months. All students enrolled in the program shall be allowed to complete the course. Any program closed may appeal the closure to the Board pursuant to the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5, Part 3.

5. Program is subject to closure after demonstration of a consistent pattern of poor test performance.

(d) Each program coordinator shall be responsible for ensuring that the following requirements are met:

1. Course objectives are accomplished;

2. Only persons having appropriate skills and knowledge are selected to conduct any part of the training;

3. The provision of direct individual care to residents by a trainee is limited to appropriately supervised clinical experiences; a program instructor must be present or readily available on-site during all clinical training hours including direct patient care for the seventy-five (75) hour training program. All activities of daily living (ADL) skills, including but not limited to bathing, feeding, toileting,

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

grooming, oral care, and perineal care, must be taught prior to student performing direct patient care;

4. The area used for training is well-lighted, well-ventilated and provides for privacy for instruction. Such requirements are not to exceed the requirements for physical space in a nursing facility;

5. Each trainee demonstrates competence in clinical skills and fundamental principles of resident care;

6. Records are kept to verify the participation and performance of each trainee in each phase of the training program. The satisfactory completion of the training program by each trainee shall be attested to on each trainee's record;

7. Each trainee is issued a certificate of completion which includes at least the name of the program, the date of issuance, the trainee's name and the signature of the program coordinator.

8. The program coordinator shall be responsible for the completion, signing and submission to the department of all required documentation.

(e) Student to teacher ratio must be as follows: 25:1 in classroom and 15:1 for direct patient care training.

(3) Nurse Aide Registry. A nursing home must not use any individual working in a facility as a nurse aide for more than four (4) months unless that individual's name is included on the Nurse Aide Registry. A facility must not use on a temporary, per diem, leased or any basis other than permanent, any individual who does not meet the requirements of training and competency testing.

(a) The nurse aide registry shall include:

1. The individual's full name, including a maiden name and any other surnames used;

2. The individual's last known home address;

3. The individual's date of birth; and,

4. The date that the individual passed the competency test and the expiration date of the individual's current registration.

(b) The name of any individual who has not performed nursing or nursing related services for a period of twenty-four (24) consecutive months shall be removed from the Nurse Aide Registry.

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

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

1200-08-06-.16 APPENDIX I

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

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

~~(This space intentionally left blank)~~

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

(This space intentionally left blank)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(2) Advance Care Plan Form

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

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____
Relation:_____
Address:
_____

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

Name: _____ Phone #: _____ Relation:
_____
Address:
_____

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

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

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

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

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-06-.16, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

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

Please sign on page 2

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

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

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

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-10
STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS

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1200-08-10-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Acceptable Plan of Correction. The Licensing Division approves an Ambulatory Surgical Treatment Center's plan to correct deficiencies identified during an on-site survey conducted by the Survey Division or its designated representative. The plan of correction shall be a written document and shall provide, but not limited to, the following information:

(a) How the deficiency will be corrected.

(b) Who will be responsible for correcting the deficiency.

(c) The date the deficiency will be corrected.

(d) How the facility will prevent the same deficiency from re-occurring.

(3) ~~(2)~~ Accredited Record Technician (ART). A person currently accredited as such by the American Medical Records Association.

(4) ~~(3)~~ Adult. An individual who has capacity and is at least 18 years of age.

(5) ~~(4)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(6) ~~(5)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) ~~(6)~~ Ambulatory surgical treatment center (ASTC). Any institution, place or building devoted primarily to the maintenance and operation of a facility for the performance of surgical procedures. Such facilities shall not provide beds or other accommodations for the stay of a patient to exceed twelve (12) hours duration, provided that the length of stay may be extended for an additional twelve (12) hours in the event such stay is deemed necessary by the attending physician, the facility medical director, or the anesthesiologist for observation or recovery, but in no event shall the length of stay exceed twenty-four (24) hours. Individual patients shall be discharged in an ambulatory condition without danger to the continued well-

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

being of the patients or shall be transferred to a hospital. Excluded from this definition are the private physicians' and dentists' office practices. For the purposes of this rule, those medical and dental offices, facilities, and other settings at which surgical procedures exclusively are performed are ASTC's and not private office practices.

ASTC's must comply with the following for purposes of these regulations:

(a) surgical procedures performed must be limited to those procedures which are commonly performed on an inpatient basis in hospitals but may safely be performed in an ASTC;

(b) if anesthesia is required for a surgical procedure, it must be local, regional or general anesthesia and routinely be four (4) hours or less in duration;

(c) surgical procedures that generally result in extensive blood loss, require major or prolonged invasion of body cavities, or are considered emergency or life-threatening in nature may not be performed.

(8) ~~(7)~~Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~Cancer Treatment and Radiation Clinic. A facility in which the only procedures performed are diagnostic and therapeutic radiology, chemotherapy and related services.

(10) ~~(9)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(11) ~~(10)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(12) ~~(11)~~ Certified Registered Nurse Anesthetist. A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.

(13) ~~(12)~~ Clinical Laboratory Improvement Act (CLIA). The federal law requiring that clinical laboratories be approved by the U.S. Department of Health and Human Services, Health Care Financing Administration.

(14) ~~(13)~~ Collaborative Plan. The formal written plan between the mid-level practitioners and licensed physician.

(15) ~~(14)~~ Collaborative Practice. The implementation of the collaborative plan that outlines procedures for consultation and collaboration with other health care professionals, e.g., licensed physicians, mid-level practitioners or nurse midwives.

(16) ~~(15)~~ Commissioner. Commissioner of the Tennessee Department of Health or his or her authorized representative.

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

(17) ~~(16)~~ Competent. A patient who has capacity.

(18) ~~(17)~~ Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(19) ~~(18)~~ Department. The Tennessee Department of Health.

(20) ~~(19)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

~~(20) Do-Not-Resuscitate (DNR) order. An order entered by the patient's treating physician in the patient's medical records which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation.~~

(21) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(22) ~~(21)~~ Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(23) ~~(22)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(24) ~~(23)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(25) ~~(24)~~ Gastrointestinal Endoscopy Clinic. A facility in which the only procedures performed are those related to the gastrointestinal tract and other endoscopic procedures. This excludes laparoscopy and limits entry to major body cavities by needle aspiration only.

(26) ~~(25)~~ General Anesthesia. An induced state of unconsciousness accompanied by partial or complete loss of protective reflexes inducing the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and produced by a pharmacological or non-pharmacological method or a combination thereof.

(27) ~~(26)~~ Graduate Registered Nurse Anesthetist. A registered nurse currently licensed in Tennessee who is a graduate of a nurse anesthesia educational program that is accredited by the American Association of Nurse Anesthetist's Council on Accreditation of Nurse Anesthesia Educational Programs and awaiting initial certification examination results, provided that initial certification is accomplished within eighteen (18) months of completion of an accredited nurse anesthesia educational program.

(28) ~~(27)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(29) ~~(28)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

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

(30) ~~(29)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(31) ~~(30)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(32) ~~(31)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-10-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(33) ~~(32)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(34) ~~(33)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(35) ~~(34)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with services of a physician or dentist, to one (1) or more non-related persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(36) ~~(35)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(37) ~~(36)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(38) ~~(37)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(39) ~~(38)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(40) ~~(39)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all applicable rules and regulations.

(41) ~~(40)~~ Life Threatening or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(42) ~~(41)~~ Medical emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(43) ~~(42)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written electronics, or graphic data prepared, kept, made or

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

maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(44) ~~(43)~~ Medical Staff. An organized body composed of individuals appointed by the ambulatory surgical treatment center governing board. All members of the medical staff shall be licensed to practice in Tennessee, with the exception of interns and residents.

(45) ~~(44)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(46) ~~(45)~~ Mid-Level Practitioner. A registered nurse licensed in Tennessee who holds a master's degree in a clinical nursing specialty, national certification through the ANCC or American Academy of Nurse Practitioners and holds a certificate of fitness to prescribe from the Tennessee Board of Nursing.

(47) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(48) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(49) ~~(46)~~ N.F.P.A. National Fire Protection Association.

(50) ~~(47)~~ Nurse Midwife. A person currently licensed by the Tennessee Board of Nursing as a registered nurse (R.N.) and qualified to deliver midwifery services or certified by the American College of Nurse-Midwives.

(51) ~~(48)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

~~(49) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(52) ~~(50)~~ PALS. Pediatric Advance Life Support.

(53) ~~(51)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(54) ~~(52)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

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

(55) ~~(53)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

~~(54) Physician Assistant. A person who is licensed by the Tennessee Board of Medical Examiners and Committee on Physician Assistants and has obtained prescription writing authority pursuant to T.C.A. §63-19-107(2)(A).~~

(56) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(57) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(58) ~~(55)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(59) ~~(56)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(60) ~~(57)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(61) ~~(58)~~ Radiological Technologist. A person currently certified as such by the American Society of Radiological Technologists.

(62) ~~(59)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(63) ~~(60)~~ Registered Nurse (R.N.). A person currently licensed as such by the Tennessee Board of Nursing.

(64) ~~(61)~~ Registered Record Administrator (RRA). A person currently registered as such by the American Medical Records Association.

(65) ~~(62)~~ Shall or Must. Compliance is mandatory.

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

(66) ~~(63)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(67) ~~(64)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(68) ~~(65)~~ Surgical Procedure. A manual or operative method performed by a licensed medical practitioner to treat diseases, injuries, conditions and/or deformities. (As related to pregnancy termination, surgical procedure excludes, but is not limited to, PAP smear or vaginal examinations, ultrasounds, amniocentesis, intramuscular injections.)

(69) ~~(66)~~ Surgical Technologist. A person who works under supervision to facilitate the safe and effective conduct of invasive surgical procedures. This individual is usually employed by a hospital, medical office, or surgical center and supervised during the surgical procedure according to institutional policy and procedure to assist in providing a safe operating room environment that maximizes patient safety by performing certain tasks including, but not limited to:

(a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

(70) ~~(67)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(71) ~~(68)~~ Transfer. The movement of a patient at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice.

(72) ~~(69)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(70) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

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

(Rule 1200-08-10-.01, continued)
effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012.

1200-08-10-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county, or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any ASTC as defined, without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30. The license shall be posted in a conspicuous place in the ASTC.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the ASTC until a license has been issued. Applicants shall not hold themselves out to the public as being an ASTC until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by Tennessee Code Annotated § 68-11-206(l), or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the ambulatory surgical treatment center to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) Each ASTC, when issued a license, shall be classified according to the type of services rendered or category of patients served. The ASTC shall confine its services to those described in its license and shall advertise only the services which it is licensed to perform. The classification shall be listed on the license.

(4) A proposed change of ownership must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For purposes of licensing, the licensee of an ASTC has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of

(Rule 1200-08-10-.05, continued)

(8) The ASTC shall have available a plan for emergency transportation to a licensed local hospital.

(9) The facility must ensure continuity of care and provide an effective discharge planning process that applies to all patients. The facility's discharge planning process, including discharge policies and procedures, must be specified in writing and must:

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission;

(c) Be provided when identified as a need by the patient, a person acting on the patient's behalf, or by the physician; and

(d) Include the likelihood of a patient's capacity for self-care or the possibility of the patient returning to his or her pre-ambulatory surgical treatment center environment.

(10) A discharge plan is required on every patient, even if the discharge is to home.

(11) The facility must arrange for the initial implementation of the patient's discharge plan and must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(12) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post-operative care.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003.*

1200-08-10-.06 BASIC SERVICES.

(1) Surgical Services.

(a) Facilities restricted in services they provide, e.g. those that restrict services to radiation therapy or use of local anesthetics only, may be exempted from all or part of the requirements of this rule pertaining to laboratory services, food and dietetic services, surgical services, and anesthesia services.

(b) If the facility provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(c) A hospital may choose to separately license a portion of the facility as an Ambulatory Surgical Treatment Center; the licensure fee for such is not required.

(d) The organization of the surgical services must be appropriate to the scope of the services offered.

(e) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

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

(f) An ASTC may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (L.P.N.) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(g) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable State laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(h) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(i) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(j) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

3. Have completed an appropriate training program for surgical technologists in the armed forces or at a CAAHEP accredited hospital or CAAHEP accredited ambulatory surgical treatment center; or

4. Successfully complete the surgical technologists LCC-ST certifying exam; or

5. Provide sufficient evidence that, prior to May 21, 2007, the person was at any time employed as a surgical technologist for not less than eighteen (18) months in the three (3) years preceding May 21, 2007 in a hospital, medical office, surgery center, or an accredited school of surgical technology; or has begun the appropriate training to be a surgical technologist prior to May 21, 2007, provided that such training is completed within three (3) years of May 21, 2007.

(k) An ASTC can petition the director of health care facilities of the department for a waiver from the provisions of 1200-08-10-.06(1)(j) if they are unable to employ a sufficient number of surgical technologists who meet the requirements. The facility shall demonstrate to the director that a diligent and thorough effort has been made to employ surgical technologist who meet the requirements. The director shall refuse to grant a waiver upon finding that a diligent and thorough effort has not been made. A waiver shall exempt a facility from meeting the requirements for not more than nine (9) months. Additional waivers may be granted, but all exemptions greater than twelve (12) months shall be approved by the Board for Licensing Health Care Facilities.

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

~~(l) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal.~~

(l) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal. Persons qualified to be employed as surgical technologists shall complete fifteen (15) hours of continuing education or contact hours annually. Current certification by the National Board of Surgical Technology and Surgical Assisting shall satisfy this requirement.

(m) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If the history has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

~~(n) Properly executed informed consent, advance directive, and organ donation forms must be in the patient's chart before surgery, except in emergencies.~~

(n) Properly executed informed consent, advance directive, if available, and organ donation forms, if available, must be in the patient's chart before surgery, except in emergencies.

~~(o) Adequate equipment and supplies must be available to the operating room suites and to the post-operative care area;~~

~~1. Call-in system (OR)~~

~~2. Cardiac monitor~~

~~3. Pulse Oximeter~~

~~4. Resuscitator~~

~~5. Defibrillator~~

~~6. Aspirator~~

~~7. Tracheotomy set~~

(o) Adequate equipment and supplies must be available as determined by the governing body and the medical staff, and must meet the current acceptable standards of practice in the ASTC industry. In conjunction with their governing body and the medical staff, the facility shall develop policies and procedures specifying the types of emergency equipment that are appropriate for the facility's patient population, and shall make the items immediately available at the ASTC to handle inter- or post-operative emergencies.

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

~~(p) A crash cart must be available and include at a minimum the following medication and supplies:~~

~~1. adrenalin (epinephrine) 1: 10,000 dilution; 10 ml~~

~~2. adrenalin (epinephrine) 1:1000 dilution; 1 ml~~

~~3. atropine 0.1 mg/ml~~

~~4. benadryl (diphenhydramine)~~

~~5. calcium chloride 10%; 10ml amp~~

~~6. dextrose. 50%~~

~~7. dilantin (phentoin)~~

~~8. dopamine~~

~~9. heparin~~

~~10. inderal (proprandolol)~~

~~11. isuprel~~

~~12. lanoxin (digoxin)~~

~~13. lasix (furosemide)~~

~~14. xylocaine (lidocaine)~~

~~15. magnesium sulfate 50%~~

~~16. narcan (naloxone)~~

~~17. pronestyl (procainaimide)~~

~~18. sodium bicarbonate 50 mEq/50ml~~

~~19. solu-medrol (methylprednisolone)~~

~~20. verapamil hydrochloride~~

~~21. mazicon~~

~~22. Suction devices, endotracheal tubes, laryngoscopes, etc.,~~

~~23. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.~~

~~24. Double tourniquet for the Bier block procedure.~~

~~25. Emergency intubation equipment.~~

~~26. IV solution and IV equipment.~~

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

(p) ~~(q)~~ At least one registered nurse shall be in the recovery area during the patient's recovery period.

(q) ~~(r)~~ The operating room register must be complete and up-to-date.

(r) ~~(s)~~ An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

(s) ~~(t)~~ The ASTC shall provide one or more surgical suites which shall be constructed, equipped, and maintained to assure the safety of patients and personnel.

(t) (u) Surgical suites are required to meet the same standards as hospital operating rooms, including those using general anesthesia.

(u) ~~(v)~~ The ASTC shall have separate areas for waiting rooms, recovery rooms, treatment and/or examining rooms.

(2) Anesthesiology Services. Anesthesia shall be administered by:

(a) A qualified anesthesiologist;

(b) A doctor of medicine or osteopathy (other than an anesthesiologist);

(c) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(d) A certified registered nurse anesthetist (CRNA); or

(e) A graduate registered nurse anesthetist under the supervision of an anesthesiologist who is immediately available if needed.

(f) After the completion of anesthesia, patients shall be constantly attended by competent personnel until responsive and able to summon aid. Each center shall maintain a log of the inspections made prior to each day's use of the anesthesia equipment. A record of all service and maintenance performed on all anesthesia machines, vaporizers and ventilators shall also be on file.

(g) When general anesthesia and/or succinylcholine are administered, the facility shall maintain thirty-six (36) ampules of dantrolene for injection on site. If dantrolene is administered, appropriate monitoring must be provided post operatively.

(h) Written policies and procedures relative to the administration of anesthesia shall be developed and approved by the Medical Staff and governing body.

(i) Any patient receiving conscious sedation shall receive:

1. continuous EKG monitoring;

2. continuous oxygen saturations;

3. serial BP monitoring at intervals no less than every 5 minutes; and

4. supplemental oxygen therapy and immediately available:

(i) ambubag;

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

(ii) suction;

(iii) endotracheal tube; and

(iv) crash cart.

(3) Medical Staff.

(a) The ASTC shall have a medical staff organized under written by-laws that are approved by the governing body. The medical staff of the ASTC shall define a mechanism to:

1. Assure that an optimal level of professional performance is maintained;

2. Appoint independent practitioners through a defined credentialing process;

3. Apply credentialing criteria uniformly;

4. Utilize the current license, relevant training and experience, current competence and the ability to perform requested privileges in the credentialing process; and

5. Provide for participation in required committees of the facility to ensure that quality medical care is provided to the patients.

(b) Each licensed independent practitioner shall provide care under the auspices of the facility in accordance with approved privileges.

(c) Clinical privileges shall be granted based on the practitioners' qualifications and the services provided by the facility, and shall be reviewed and/or revised at least every two (2) years.

(4) Nursing Service. A licensed registered nurse (R.N.) shall be on duty at all times. Additional appropriately trained staff shall be provided as needed to ensure that the medical needs of the patients are fully met.

(a) The ASTC shall be organized under written policies and procedures relating to patient care, establishment of standards for nursing care and mechanisms for evaluating such care and nursing services.

(b) A qualified registered nurse designated by the administrator shall be responsible for coordinating and supervising all nursing services.

(c) There shall be a sufficient staffing pattern of registered nurses to provide quality nursing care to each surgical patient from admission through discharge. Additional staff shall be on duty and available to assist the professional staff to adequately handle routine and emergency patient needs.

(d) The ASTC shall establish written procedures for emergency services which will ensure that professional staff members who have been trained in emergency resuscitation procedures shall be on duty at all times when there is a patient in the ASTC and until the patient has been discharged.

(e) Nursing care policies and procedures shall be consistent with professionally recognized standards of nursing practice and shall be in accordance with the Nurse Practice Act of

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

the State of Tennessee and the Association of Operating Room Nurses Standards of Practice.

(f) Staff development and training shall be provided to the nursing staff and other ancillary staff in order to maintain and improve knowledge and skills. The educational/training program shall be planned, documented and conducted on a continuing basis. There shall be at least appropriate training on equipment, safety concerns, infection control and emergency care on an annual basis.

(5) Pharmaceutical Services. The ASTC must provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.

(6) Ancillary Services. All ancillary or supportive health or medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.

(7) Radiological Services. The ASTC shall provide within the facility, or through arrangement, diagnostic radiological services commensurate with the needs of the ambulatory surgical treatment center.

(a) If radiological services are provided by facility staff, the services shall be maintained free of hazards for patients and personnel.

(b) New installations of radiological equipment, and subsequent inspections for the identification of radiation hazards shall be made as specified in state and federal requirements.

(c) Personnel monitoring shall be maintained for each individual working in the area of radiation. Readings shall be on at least a monthly basis and reports kept on file and available for review.

1. Personnel - The ASTC shall have a radiologist either full-time or part-time on a consulting basis, both to supervise the service and to discharge professional radiological services.

2. The use of all radiological apparatus shall be limited to personnel designated as qualified by the radiologist; and use of fluoroscopes shall be limited to physicians.

(d) If provided under arrangement with an outside provider, the radiological services must be directed by a qualified radiologist and meet state and federal requirements.

(8) Laboratory Services.

(a) The ASTC shall provide on the premises or by written agreement with a laboratory licensed under T.C.A. 68-29-105, a clinical laboratory to provide those services commensurate with the needs and services of the ASTC.

(b) Any patient terminating pregnancy in an ASTC shall have an Rh type, documented prior to the procedure, performed on her blood. In addition, she shall be given the opportunity to receive Rh immune globulin after an appropriate crossmatch procedure is performed within a licensed laboratory.

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

(9) Food and Dietetic Services. If a patient will be in the facility for more than four (4) hours post-op, an appropriate diet shall be provided.

(10) Environmental Services.

(a) The facility shall provide a safe, accessible, effective and efficient environment of care consistent with its mission, service, law and regulation.

(b) The facility shall develop policies and procedures that address:

1. Safety;

2. Security;

3. Control of hazardous materials and waste;

4. Emergency preparedness;

5. Life safety;

6. Medical equipment; and,

7. Utility systems.

(c) Staff shall have been oriented to and educated about the environment of care and possess knowledge and skills to perform responsibilities under the environment of care policies and procedures.

(d) Utility systems, medical equipment, life safety elements, and safety elements of the environment of care shall be maintained, tested and inspected.

(e) Safety issues shall be addressed and resolved.

(f) Appropriate staff shall participate in implementing safety recommendations and monitoring their effectiveness.

(g) The building and grounds shall be suitable to services provided and patients served.

(11) Medical Records.

(a) The ASTC shall comply with the Medical Records Act of 1974, T.C.A. § 68-11-301, et seq.

(b) A medical record shall be maintained for each person receiving medical care provided by the ASTC and shall include:

1. Patient identification;

2. Name of nearest relative or other responsible agent;

3. Identification of primary source of medical care;

4. Dates and times of visits;

5. Signed informed consent;

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

6. Pertinent medical history;

7. Diagnosis;

8. Physician examination report;

9. Anesthesia records of pertinent preoperative and postoperative reports including preanesthesia evaluation, type of anesthesia, technique and dosage used;

10. Operative report;

11. Discharge summary, including instructions for self care and instructions for obtaining postoperative emergency care;

12. Reports of all laboratory and diagnostic procedures along with tests performed and the results authenticated by the appropriate personnel; and,

13. X-ray reports.

(c) Medical records shall be current and confidential. Medical records and copies thereof shall be made available when requested by an authorized representative of the board or the department.

Rule 1200-08-10-.06 Basic Services is amended by adding new paragraph (12) and its subparagraphs, parts and subparts, which shall read:

(12) Invasive Procedures

(a) Only a medical doctor, licensed pursuant to *T.C.A. § 63-6-101 et seq.*, or an osteopathic physician, licensed pursuant to *T.C.A. § 63-9-101 et seq.*, who meet the following qualifications will be permitted to perform invasive procedures of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine:

1. Board certified through the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

(i) Anesthesiology;

(ii) Neurological surgery, or Neuromusculoskeletal medicine;

(iii) Orthopedic surgery;

(iv) Physical medicine and rehabilitation;

(v) Radiology; or

(vi) Any other board certified physician who had completed an ABMS subspecialty board in pain medicine or completed an ACGME accredited pain fellowship;

2. A recent graduate in a medical specialty listed in part 1 not yet eligible to apply for ABMS, AOA, or ABPS/AAPS board certification; provided, there is a practice

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

relationship with a medical doctor or an osteopathic physician who meets the requirements of part 1.;

3. A licensee who is not board certified in one of the specialties listed in part 1, but is board certified in a different ABMS, AOA, or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

4. A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

5. A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the Commission on Accreditation of Rehabilitation Facilities or any successor organizations.

(b) An advanced practice nurse or physician assistant shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine under the direct supervision of a medical doctor or an osteopathic physician who meets the qualifications of Rule 1200-08-10-.06 (12)(a)1 or 3. Direct supervision is defined as being physically present in the center at the time the invasive procedure is performed.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68, 68-11-209, 68-11-216, 68-57-101, 68-57-102, 68-57-104, and 68-57-105.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed September 10, 1991; effective October 25, 1991. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-10-.07 RESERVED.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-57-105.* ***Administrative History:*** *Original rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 4, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-10-.08 BUILDING STANDARDS.

(1) An ASTC shall construct, arrange, and maintain the condition of the physical plant and the overall ASTC environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All new facilities shall conform to the 2006 edition of the International Building Code, except for Chapter 11 pertaining to accessibility and except for Chapter 27 pertaining to electrical requirements; the 2006 edition of the International Mechanical Code; the 2006 edition of the International Plumbing Code; the 2006 edition of the International Fuel and Gas Code; the 2006 edition of the National Fire Protection Code (NFPA) NFPA 1 including Annex A which incorporates the 2006 edition of the Life Safety Code; the 2010 Guidelines for Design and Construction of Health Care Facilities; and the 2005 edition of the National Electrical Code. The requirements of the 2004 Americans with Disabilities Act (A.D.A.), and the 1999 edition of North Carolina

(Rule 1200-08-10-.12, continued)

(2) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed September 9, 2005; effective November 23, 2005.*

1200-08-10-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each ambulatory surgical treatment center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(Rule 1200-08-10-.13, continued)

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

(Rule 1200-08-10-.13, continued)

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

6. any other adult who satisfies the requirements of 1200-08-10-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-10-.13(16)(c) thru 1200-08-10-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate.

(Rule 1200-08-10-.13, continued)

Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-10-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-10-.13(20) thru 1200-08-10-.13(22), a health care provider or institution providing care to a patient shall:

(Rule 1200-08-10-.13, continued)

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-10-.13(20) thru 1200-08-10-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(Rule 1200-08-10-.13, continued)

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

(Rule 1200-08-10-.13, continued)

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

(Rule 1200-08-10-.13, continued)

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or

(Rule 1200-08-10-.13, continued)

owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed June 22, 1992; effective August 6, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed September 9, 2005; effective November 23, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-10-.14 DISASTER PREPAREDNESS.

(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:

(a) Fire Safety Procedures Plan shall include:

1. Minor fires;

2. Major fires;

3. Fighting the fire;

1200-08-10-.15 APPENDIX I

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

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

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(Rule 1200-08-10-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-10-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-10-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident	☐ Patient's preferences
☐ Health care agent	☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Court-appointed guardian	☐ Medical indications
☐ Health care surrogate	☐ (Other) _____
☐ Parent of minor	
☐ Other: _____ (Specify)	

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-10-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

(Rule 1200-08-10-.15, continued)

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

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

Please sign on page 2

(Rule 1200-08-10-.15, continued)
Other instructions, such as burial arrangements, hospice care, etc.: _____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-10-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

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

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1200-08-11-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Activities of Daily Living (ADL's). Those personal functional activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, and moving from one place to another.

(3) ~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~ Aged. A person who is fifty-five (55) years of age or older.

(6) ~~(5)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) ~~(6)~~ Ambulatory resident. A resident who is physically and mentally capable under emergency conditions of finding a way to safety without physical assistance from another person. An ambulatory resident may use a cane, wheelchair or other supportive device and may require verbal prompting.

(8) ~~(7)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary function in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal

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

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

(11) ~~(10)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12) ~~(11)~~ Department. The Tennessee Department of Health.

(13) ~~(12)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(14) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) ~~(13)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(16) ~~(14)~~ Emergency. Any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.

(17) ~~(15)~~ Emergency responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(18) ~~(16)~~ Evacuation Capability. The ability to either evacuate the building or move to a point of safety.

(19) ~~(17)~~ Guardian. A judicially appointed guardian of conservator having authority to make a health care decision

(20) ~~(18)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(21) ~~(19)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. 32-11-103(5)

(22) ~~(20)~~ Health care decision. Consent, refusal or consent or withdrawal of consent to health care.

(23) ~~(21)~~ Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with healthcare decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-11-.12 or T.C.A. 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(24) ~~(22)~~ Health Care Institution. A health care institution as defined in T.C.A. 68-11-1602.

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

(25) ~~(23)~~ Health Care Provider A person who si licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(26) ~~(24)~~ Holding Out to the Public. Advertising or soliciting the public through the use of personal, telephone, mail or other forms of communication to provide information about services provided by the facility.

(27) ~~(25)~~ Home for the Aged. A home represented and held out to the general public as a home which accepts primarily aged persons for relatively permanent, domiciliary care with primarily being defined as 51% or more of the population of the home for the aged. It provides room, board and personal services to four (4) or more nonrelated persons. The term home includes any building or part thereof which provides services as defined in these rules.

(28) ~~(26)~~ Home for the Aged Resident. A person who is ambulatory and who requires permanent, domiciliary care but who will be transferred to a licensed hospital, licensed nursing home or licensed assisted care living facility when health care services are needed which must be provided in such other facilities.

(29) ~~(27)~~ Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(30) ~~(28)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(31) ~~(29)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(32) ~~(30)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(33) ~~(31)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(34) ~~(32)~~ Medically Inappropriate Treatment Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident

(35) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(36) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness, however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(37) ~~(33)~~ N.F.P.A. The National Fire Protection Association.

~~(34) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to~~

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

~~maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(38) ~~(35)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(39) ~~(36)~~ Personal Services. Those services that are rendered to residents who need supervision or assistance in activities of daily living. Personal services must include protective care of the resident, responsibility for the safety of the resident when in the facility, daily awareness of the resident's whereabouts and the ability and readiness to intervene if crises arise. Personal services do not include nursing or medical care.

(40) ~~(37)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(41) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(42) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(43) ~~(38)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2

(44) ~~(39)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency services personnel providers, or entities acting within the usual course of their professions, and other emergency responders.

(45) ~~(40)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not limited to, availability by telephone.

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

(46) ~~(41)~~ Responsible Attendant. The person designated by the licensee who remains awake to provide personal services to the residents. In the absence of the licensee, the responsible attendant is responsible for ensuring the home complies with all rules and regulations.

(47) ~~(42)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(48) ~~(43)~~ Shall or Must. Compliance is mandatory.

(49) ~~(44)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(50) ~~(45)~~ Supervising Heath Care Provider. The designated physician or, if there is no designated physician ot the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(51) ~~(46)~~ Surrogate. An individual, other that a resident's agent or guardian, authorized to make a health care decision for the resident.

(52) ~~(47)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

~~(48) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Amendment filed December 7, 1993; effective February 20, 1994. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003.Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-11-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local government unit, or any division, department, board or agency thereof shall establish, conduct, operate, or maintain in the State of Tennessee any home for the aged without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the facility.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

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

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

(15) To associate and communicate privately with persons of his or her choice, including receiving visitors at reasonable hours;

(16) To participate or to refuse to participate in community activities, including cultural, educational, religious, community service, vocational and recreational activities;

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

(18) To execute, modify, or rescind a Living Will.

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

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

(1) Pursuant to this Rule, each home for the aged shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

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

(7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:

1. the resident has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

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

(c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.

(d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, be given in order of descending preference for service as a surrogate to:

1. the resident's spouse, unless legally separated;

2. the resident's adult child;

3. the resident's parent;

4. the resident's adult sibling;

5. any other adult relative of the resident; or

6. any other adult who satisfies the requirements of 1200-08-11-.12(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;

2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the resident during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-11-.12(16)(c) thru 1200-08-11-.12(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence,

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

or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-11-.12(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

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

(18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.

(19) Except as provided in 1200-08-11-.12(20) thru 1200-08-11-.12(22), a health care provider or institution providing care to a resident shall:

(a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and

(b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-11-.12(20) thru 1200-08-11-.12(22) shall:

(a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;

(b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

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

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.~~

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

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

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

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency

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

medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed June 22, 1992; effective August 6, 1992. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-11-.13 DISASTER PREPAREDNESS.

(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:

(a) Fire Safety Procedures Plan shall include:

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

(2) All facilities shall participate in the Tennessee Emergency Management Agency local/county emergency plan on an annual basis. Participation includes filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation must be maintained and shall be made available to survey staff as proof of participation.

(3) For facilities which elect to have an emergency generator, the generator shall be designed to meet the facility's HVAC and essential needs and shall have a minimum of twenty-four (24) hours of fuel designed to operate at its rated load. This requirement shall be coordinated with the Disaster Preparedness Plan or with local resources.

(a) All generators shall be exercised for thirty (30) minutes each month under full load, including automatic and manual transfer of equipment.

(b) The emergency generator shall be operated at the existing connected load and not on dual power, and a monthly log shall be maintained by the facility. The facility shall have trained staff familiar with the generator's operation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Repeal and new rule filed July 27, 2000; effective October 10, 2000.*

1200-08-11-.14 APPENDIX I

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

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

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A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED	
Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ Resuscitate (CPR) ☐ Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____

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

Section D Check One Box Only in Each Column	MEDICALLY ADMINISTERED FLUIDS & NUTRITION. Oral fluids & nutrition must be offered if medically feasible. ☐ No IV fluids (provide other measures to assure comfort) ☐ No feeding tube ☐ IV fluids for a defined trial period ☐ Feeding tube for a defined trial period ☐ IV fluids long-term if indicated ☐ Feeding tube long-term Other Instructions: _____	
Section E Must be Completed	Discussed with: ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	The Basis for These Orders Is: (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

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

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	Physician/NP/CNS/PA Signature Date NP/CNS/PA (Signature at Discharge)	MD/NP/CNS/PA Phone Number:

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

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

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-11-.14, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

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

Please sign on page 2

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

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

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

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-15
STANDARDS FOR RESIDENTIAL HOSPICES

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1200-08-15-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Administrator. An individual appointed by a governing body who is responsible for the day to day management of the hospice program.

(3) ~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) ~~(5)~~ Bereavement Counseling. Counseling services provided to the patient's or resident's family both prior to and after the patient's or resident's death.

(7) ~~(6)~~ Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.

(8) ~~(7)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient or resident to make health care decisions while having the capacity to do so. A patient or resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient or resident shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient or resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the

(Rule 1200-08-15-.01, continued)

administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient or resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) ~~(10)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) ~~(11)~~ Clinical Note. A written and dated notation containing a patient or resident assessment, responses to medications, treatments and services, and/or any changes in condition signed by a health team member who made contact with the patient or resident.

(13) ~~(12)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(14) ~~(13)~~ Competent. A patient or resident who has capacity.

(15) ~~(14)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(16) ~~(15)~~ Department. The Tennessee Department of Health.

(17) ~~(16)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(18) ~~(17)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Diabetics Association pursuant to T.C.A. §63-25-204.

~~(18) Do Not Resuscitate (DNR) Order. An order entered by the patient's or resident's treating physician in the patient's medical records which states that in the event the patient or resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(19) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(20) ~~(19)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(21) ~~(20)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(22) ~~(21)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(23) ~~(22)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(24) ~~(23)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(Rule 1200-08-15-.01, continued)

(25) ~~(24)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(26) ~~(25)~~ Health Care Decision-maker. In the case of a patient or resident who lacks capacity, the patient's or resident's health care decision-maker is one of the following: the patient's or resident's health care agent as specified in an advance directive, the patient's or resident's court-appointed guardian or conservator with health care decision-making authority, the patient's or resident's surrogate as determined pursuant to Rule 1200-08-15-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(27) ~~(26)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(28) ~~(27)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(29) ~~(28)~~ HIV Resident. An individual who is in need of domiciliary care and who has been diagnosed and certified in writing by a licensed physician as being HIV (human immunodeficiency virus) positive.

(30) ~~(29)~~ Home Care Organization. As defined by T.C.A. § 68-11-201 "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(31) ~~(30)~~ Home Health Aide/Hospice Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as an extension of therapy services, personal care regarding nutritional needs, ambulation and exercise.

(32) ~~(31)~~ Hospice Care Clinical Coordinator. A person identified as being responsible for the clinical management of all aspects of a hospice program. The hospice clinical coordinator must have at least one (1) year of supervisory experience in hospice or home health care and be either a licensed physician or a registered nurse.

(33) ~~(32)~~ Hospice Patient. An individual who:

(a) Has been diagnosed as terminally ill;

(b) Has been certified in writing by a physician to have an anticipated life expectancy of six (6) months or less; and,

(c) Has voluntarily requested admission to, and been accepted by a licensed hospice.

~~(33) Hospice Services. A coordinated program of care, under the direction of an identifiable hospice administrator, which provides palliative and supportive medical and other services to hospice patients and their families. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week.~~

(34) Hospice Services. As defined by T.C.A. § 68-11-201, "hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week pursuant to the

(Rule 1200-08-15-.01, continued)

patient's Hospice plan of care. A licensed hospice may provide services to a non-hospice patient; provided, that services to a non-hospice patient shall be limited to palliative care only.

(35) ~~(34)~~ Incompetent. A patient or resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(36) ~~(35)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(37) ~~(36)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(38) ~~(37)~~ Involuntary Transfer. The movement of a patient or resident without the consent of the resident, the resident's legal guardian, next of kin or representative, with required notification to the appropriate agencies.

(39) ~~(38)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(40) ~~(39)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(41) ~~(40)~~ Licensed Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(42) ~~(41)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(43) ~~(42)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(44) ~~(43)~~ Medical Director. A licensed physician employed by the residential hospice to be responsible for medical care in the facility.

(45) ~~(44)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's or resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(46) ~~(45)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, and other written electronics, or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients and residents.

(47) ~~(46)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or resident or other medical or surgical treatments to achieve the expressed goals of the informed patient or resident. In the case of the incompetent patient or resident, the patient's or resident's representative expresses the goals of the patient or resident.

(48) ~~(47)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by the residential hospice and under the supervision of a certified master social

(Rule 1200-08-15-.01, continued)

worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other organization personnel.

(49) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(50) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(51) ~~(48)~~ N.F.P.A. The National Fire Protection Association.

(52) ~~(49)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(53) ~~(50)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(54) ~~(51)~~ Palliative. The reduction or abatement of pain or troubling symptoms by appropriate coordination of all elements of the hospice care team to achieve needed relief of distress.

~~(52) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(55) ~~(53)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(56) ~~(54)~~ Personally Informing. A communication by any effective means from the patient or resident directly to a health care provider.

(57) ~~(55)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(58) ~~(56)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(59) ~~(57)~~ Physical Therapist Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(60) ~~(58)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(61) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(62) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(63) ~~(59)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(64) ~~(60)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(65) ~~(61)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's or resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(66) ~~(62)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(67) ~~(63)~~ Residential Hospice. A licensed homelike residential facility designed, staffed and organized to provide hospice and/or HIV care services, except such services shall be provided at such residential facility rather than the patient's or resident's regular or temporary place of residence. A residential hospice shall not provide hospice and/or HIV care services to any person other than a hospice and/or HIV resident.

(68) ~~(64)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(69) ~~(65)~~ Respiratory Therapy Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(70) ~~(66)~~ Respite Care. A short-term period of inpatient care provided to a hospice patient only when necessary to relieve the family members or other persons caring for the patient.

(71) ~~(67)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(Rule 1200-08-15-.01, continued)

(72) ~~(68)~~ Shall or Must. Compliance is mandatory.

(73) ~~(69)~~ Social Worker. An individual who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has one (1) year of social work experience in a health care setting.

(74) ~~(70)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

(75) ~~(71)~~ Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.

(76) ~~(72)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that organization.

(77) ~~(73)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(78) ~~(74)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(79) ~~(75)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(80) ~~(76)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.

(81) ~~(77)~~ Surrogate. An individual, other than a patient's or resident's agent or guardian, authorized to make a health care decision for the patient or resident.

(82) ~~(78)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(83) ~~(79)~~ Transfer. The movement of a patient or resident at the direction of a physician or other qualified medical personnel when a physician is not readily available, but does not include such movement of a patient or_resident who leaves the facility against medical advice.

(84) ~~(80)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient or resident.

~~(81) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(Rule 1200-08-15-.01, continued)

(85) ~~(82)~~ Volunteer. An individual who agrees to provide services to a hospice care patient or HIV resident and/or family member(s), without monetary compensation, with appropriate supervision by the facility.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed November 22, 2005; effective February 5, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-15-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local government unit, or any division, department, board or agency thereof shall establish, conduct, operate, or maintain in the State of Tennessee any residential hospice without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic area specified by the certificate of need or at the time of the original licensing. The name of the residential hospice shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the residential hospice.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

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

1.	Less than 25 beds	$ 800.00
2.	25 to 49 beds, inclusive	$1,025.00
3.	50 to 74 beds, inclusive	$1,225.00
4.	75 to 99 beds, inclusive	$1,425.00
5.	100 to 124 beds, inclusive	$ 1,625.00
6.	125 to 149 beds, inclusive	$ 1,825.00
7.	150 to 174 beds, inclusive	$ 2,025.00
8.	175 to 199 beds, inclusive	$ 2,225.00

For residential hospice of two hundred (200) beds or more the fee shall be two thousand four hundred twenty-five dollars ($2,425.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients or residents shall not be admitted to the residential hospice until a license has been

(Rule 1200-08-15-.05, continued)

(g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and,

(h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include, but not be limited to the following subject areas:

1. Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;

2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and,

5. Communicating with families and other persons interested in the resident.

(18) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 20, 2006; effective July 4, 2006.*

1200-08-15-.06 BASIC HOSPICE FUNCTIONS.

(1) Core Functions. A residential hospice must ensure that substantially all core services are routinely provided directly by hospice employees. A residential hospice may use contracted staff if necessary to supplement residential hospice employees in order to meet the needs of patients and residents.

(a) Nursing services. The residential hospice must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of patients and residents are met.

2. Patient and resident care responsibilities of nursing personnel must be specified.

3. Hospice services and HIV care services must be provided in accordance with recognized standards of practice.

4. Nursing services include the authorization of a Registered Nurse to pronounce the death of a patient or resident.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions and HIV care, physician employees of the residential hospice including the physician member(s) of the interdisciplinary group, must also meet the

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

general medical needs of the patients and residents to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the individual and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's or resident's death, as well as dietary, therapeutic, spiritual and may include any other counseling services identified in the plan of care for the individual and family provided while the individual is a patient or resident of the residential hospice.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided, and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice to patients as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the residential hospice.

(2) Plan of Care.

A written plan of care must be established and maintained for each individual admitted to a residential hospice, and the care provided to an individual must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

~~(b) Review of plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than (14) days, by the attending physician, the medical director or the physician designee and the interdisciplinary group. These reviews must be documented.~~

(b) Review of plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services or hospice services required including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's or resident's and family's needs.

(3) Interdisciplinary Group.

The organization providing hospice services must designate an interdisciplinary group and groups composed of individuals who provide or supervise the care and services offered by the residential hospice:

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

(a) Composition of Group. The residential hospice must have an interdisciplinary group or groups that include at least the following individuals who are employees of the residential hospice:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

1. Participation in the establishment of the plan of care;

2. Provision or supervision of the quality of hospice care and services and/or HIV care services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care or HIV care; and

4. Establishing and maintaining policies governing the day-to-day provision of hospice care and services and/or HIV care and services.

(c) If a residential hospice has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in paragraph (b)(4) of this section.

(d) Coordinator. The residential hospice must designate a registered nurse to coordinate the implementation of the plan of care of each patient and/or resident.

(e) Volunteers. The residential hospice may use volunteers, in defined roles, under the supervision of a designated residential hospice employee.

1. Training. The residential hospice must provide appropriate orientation and training that is consistent with acceptable standards of residential hospice practice.

2. Role. Volunteers may be used in administrative or direct patient or resident care roles.

3. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

4. Availability of clergy. The residential hospice must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients or residents who request such visits and must advise patients and/or residents of this opportunity.

(4) Continuation of Care. A residential hospice must assist in coordinating continued care should the patient or resident be transferred or discharged from the residential hospice.

(5) Drug and Treatments. Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope

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

of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(6) Performance Improvement Program. The residential hospice must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and performance of the organization. The performance improvement program must be ongoing and have a written plan of implementation which assures that:

(a) All organized services related to resident care, including services furnished by a contractor, are evaluated;

(b) Nosocomial infections and medication therapy are evaluated;

(c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;

(d) The residential hospice must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its patients and/or HIV care residents;

(e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;

(f) Performance improvement program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;

(g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.

(7) Infection Control.

(a) The residential hospice must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an infection control committee, including the medical director and members of the nursing staff and administrative staff, develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient and/or resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

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

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient and/or resident equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator, the medical director and a registered nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) The facility shall develop policies and procedures for testing a patient's or resident's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's or resident's blood or other body fluid. The testing shall be performed at no charge to the patient or resident, and the test results shall be confidential.

(e) The facility and its employees shall adopt and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(f) Every residential hospice shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(g) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(h) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient and resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(i) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for patients and/or residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.

(j) Laundry facilities located in the residential hospice shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

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

3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(k) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the residential hospice or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.

(8) Hospice Aide Services. Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The hospice aide shall be assigned to a particular patient or resident by a registered nurse. Written instructions for patient or resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, reporting changes in the patient's or resident's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member, shall monitor and assess the hospice aide's competence in providing care, relationships and determine whether goals are being met.

(c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as issues are identified.

(9) Physical therapy, occupational therapy, respiratory therapy and speech language pathology. Physical therapy services, occupational therapy services, respiratory therapy services and speech language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(10) Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice, only by appropriately licensed employees of the hospice.

(b) The residential hospice must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the patient.

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

(c) Drugs and biologicals may be administered by the patient or resident or his/her family member if the patient's or resident's attending physician has approved.

(11) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every residential hospice patient and/or HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each clinical record is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual's record must contain:

1. The initial and subsequent assessments;

2. The plan of care;

3. Identification data;

4. Consent and authorization and election forms;

5. Pertinent medical history; and

6. Complete documentation of all services and events, including but not limited to evaluations, treatments and progress notes.

(b) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of patients or residents under mental disability or minority, their complete residential hospice records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient or resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the residential hospice's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the residential hospice discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. §§ 68-11-308). If a patient or resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient or resident when the residential hospice is directly involved in the transfer.

(d) The residential hospice must have a procedure for ensuring the confidentiality of patient and resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to, or alter, patient or resident records. Original medical records must be released by the facility only in accordance with federal and state laws.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided

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

that such person has adopted same as his or her signature in accordance with established protocol or rules.

(f) All entries must be legible, complete, dated and authenticated according to facility policy.

(12) Pharmaceutical Services.

(a) The residential hospice shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.

(b) Test reagents, germicides, and disinfectants shall be stored separately from drugs, devices and related materials. External drugs and related materials must be stored separately from internal drugs, devices and related materials. All drugs, devices and related materials must be properly labeled. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every residential hospice shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the patient's or resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the patient or resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the patient or resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to residential hospice policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

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

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the patient or resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the patient or resident only on a written order by the physician. A notation of drugs released to the patient or resident shall be entered into the medical record. All unused prescriptions left in a residential hospice shall be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the residential hospice.

(13) Laboratory Services.

The residential hospice must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the patients and/or residents. The residential hospice must ensure that all laboratory services provided to its patients and/or residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14) Food and Dietetic Services.

(a) The residential hospice must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.

(b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of patients and/or residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.

(c) Menus must meet the needs of the patients and/or residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients and/or residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the patients and/or residents.

4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.

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

(d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients and/ or residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage, while being prepared and served, and/or transported through hallways.

(g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(h) Dishwashing machines shall be used according to manufacturer specifications.

(i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.

(m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed November 22, 2005; effective February 5, 2006.*

1200-08-15-.07 RESERVED.

1200-08-15-.08 BUILDING STANDARDS.

(1) A residential hospice shall construct, arrange, and maintain the condition of the physical plant and the overall residential hospice environment in such a manner that the safety and well-being of the patients are assured.

Rule 1200-08-15-.12, continued)

(b) When necessary to protect and preserve the rights of the patients or residents in the facility; or

(c) When contradicted by the explicit provisions of another rule of the board.

(3) Any reduction in patients' or resident's rights must be explicit, reasonable, appropriate to the justification, the least restrictive response feasible, shall be explained to the patient or resident, and must be documented in the individual patient's or resident's record by reciting the limitation's reason and scope.

(4) Patients' and/or residents' pets and other animals utilized for pet therapy programs shall be allowed in the facility. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

(5) Each patient or resident has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendments filed November 22, 2005; effective February 5, 2006.*

1200-08-15-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each residential hospice shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient or resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients or residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient or resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient or resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient or resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient or resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient or resident upon the death of the patient or resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient or resident lacks capacity, and ceases to be effective upon a determination that the patient or resident has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(Rule 1200-08-15-.13, continued)

(6) A determination that a patient or resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's or resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's or resident's best interest. In determining the patient's or resident's best interest, the agent shall consider the patient's or resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's or resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient or resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient or resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient or resident who is an adult or emancipated minor if and only if:

1. the patient or resident has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient or resident who lacks capacity, the patient's or resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient or resident is receiving health care.

(d) The patient's or resident's surrogate shall be an adult who has exhibited special care and concern for the patient or resident, who is familiar with the patient's or resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's or resident's spouse, unless legally separated;

2. the patient's or resident's adult child;

3. the patient's or resident's parent;

4. the patient's or resident's adult sibling;

5. any other adult relative of the patient or resident; or

6. any other adult who satisfies the requirements of 1200-08-15-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient or resident shall be eligible to serve as the patient's or resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or resident or in accordance with the patient's or resident's best interests;

2. The proposed surrogate's regular contact with the patient or resident prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient or resident during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient or resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-15-.13(16)(c) thru 1200-08-15-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient or resident after the designated physician either:

(Rule 1200-08-15-.13, continued)

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's or resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's or resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's or resident's best interest. In determining the patient's or resident's best interest, the surrogate shall consider the patient's or resident's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient or resident may make all health care decisions for the patient or resident that the patient or resident could make on the patient's or resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient or resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's or resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient or resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-15-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's or resident's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient or resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient or resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's or resident's individual instructions and may not revoke the patient's or resident's advance directive absent a court order to the contrary.

(Rule 1200-08-15-.13, continued)

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient or resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient or resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's or resident's current clinical record and communicate the determination to the patient or resident, if possible, and to any person then authorized to make health care decisions for the patient or resident.

(19) Except as provided in 1200-08-15-.13(20) thru 1200-08-15-.13(22), a health care provider or institution providing care to a patient or resident shall:

(a) comply with an individual instruction of the patient or resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient or resident; and

(b) comply with a health care decision for the patient or resident made by a person then authorized to make health care decisions for the patient or resident to the same extent as if the decision had been made by the patient or resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or resident or to a person then authorized to make health care decisions for the patient or resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-15-.13(20) thru 1200-08-15-.13(22) shall:

(a) promptly so inform the patient or resident, if possible, and any person then authorized to make health care decisions for the patient or resident;

(b) provide continuing care to the patient or resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or resident or person then authorized to make health care decisions for the patient or resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient or resident to another health care provider or institution that is willing to comply with the instruction or decision; and

(Rule 1200-08-15-.13, continued)

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient or resident has the same rights as the patient or resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient or resident, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient or resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

(Rule 1200-08-15-.13, continued)

~~(b) If the patient or resident is an adult who is capable of making an informed decision, the patient's or resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient or resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient or resident be resuscitated by the person authorized to consent on the patient's or resident's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient or resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care

(Rule 1200-08-15-.13, continued)

Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise

(Rule 1200-08-15-.13, continued)

incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed November 22, 2005; effective February 5, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-15-.14 DISASTER PREPAREDNESS.

(1) Emergency Electrical Power.

(Rule 1200-08-15-.14, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Amendment filed February 9, 1998; effective April 25, 1998. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed November 22, 2005; effective February 5, 2006.*

1200-08-15-.15 APPENDIX I

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

~~(This space intentionally left blank)~~

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

(This space intentionally left blank)

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED	
Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

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

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is: (Must be completed)** ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	**Physician Signature** (Mandatory) _____ Date	**Physician Phone Number**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

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

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

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

~~Directions for Health Care Professionals~~

~~Completing POST~~

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

~~POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.~~

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

~~Using POST~~

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

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

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

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

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

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

~~A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.~~

~~Reviewing POST~~

~~This POST should be reviewed if:~~

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

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

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name

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

This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident	☐ Patient's preferences
☐ Health care agent	☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Court-appointed guardian	☐ Medical indications
☐ Health care surrogate	☐ (Other) _____
☐ Parent of minor	
☐ Other: _____ (Specify)	

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

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

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(2) Advance Care Plan Form

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

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

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

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐	☐	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications,

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

Yes	No	
		and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2 Page 1 of 2

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the

(Rule 1200-08-15-.15, continued)
signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-24
STANDARDS FOR BIRTHING CENTERS

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1200-08-24-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Adult. An individual who has capacity and is at least 18 years of age.

(3) ~~(2)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(4) ~~(3)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(5) ~~(4)~~ Birthing Center. Any institution, facility, place or building devoted exclusively or primarily to the provision of routine delivery services and postpartum care for mothers and their newborn infants.

(6) ~~(5)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(7) ~~(6)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(8) ~~(7)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a patient, whether by mechanical devices, chest compression, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) ~~(8)~~ Certified Nurse Midwife (CNM). A registered nurse currently licensed as such by the Tennessee Board of Nursing and certified by the American College of Nurse-Midwives and qualified to deliver midwifery services.

(Rule 1200-08-24-.01, continued)

(10) ~~(9)~~ Certified Professional Midwife (CPM). A North American Registry of Midwives (NARM) certified midwife, who must have midwifery skills and experience evaluated and pass written and skills examinations.

(11) ~~(10)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12) ~~(11)~~ Competent. A patient who has capacity.

(13) ~~(12)~~ Department. The Tennessee Department of Health.

(14) ~~(13)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

~~(14) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(15) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(16) ~~(15)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(17) ~~(16)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(18) ~~(17)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(19) ~~(18)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(20) ~~(19)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(21) ~~(20)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(22) ~~(21)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-24-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(23) ~~(22)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(Rule 1200-08-24-.01, continued)

(24) ~~(23)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(25) ~~(24)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity. injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(26) ~~(25)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(27) ~~(26)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(28) ~~(27)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(29) ~~(28)~~ Licensee. The person or body to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(30) ~~(29)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(31) ~~(30)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(32) ~~(31)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(33) ~~(32)~~ Member of the Professional Medical Community. A professional employed by the birthing center and on the premises at the time of a voluntary delivery.

(34) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(35) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(36) (33) NFPA. The National Fire Protection Association.

~~(34) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to~~

(Rule 1200-08-24-.01, continued)

~~maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(37) ~~(35)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(38) ~~(36)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(39) ~~(37)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(40) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(41) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(42) ~~(38)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(43) ~~(39)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(44) ~~(40)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(45) ~~(41)~~ Routine Delivery Services. Services provided by a physician or a certified professional midwife practicing when these rules become final or a certified nurse midwife related to the normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health, promoting a family-centered approach to care and viewing pregnancy and delivery as a normal physiological process requiring limited technological and pharmacological support.

(Rule 1200-08-24-.01, continued)

(46) ~~(42)~~ Shall or Must. Compliance is mandatory.

(47) ~~(43)~~ Stabilize. To provide such medical treatment of the emergency medical condition as may be necessary to assure, within reasonable medical probability, that the condition will not materially deteriorate due to the transfer as determined by a physician or other qualified medical personnel when a physician is not readily available.

(48) ~~(44)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(49) ~~(45)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(50) ~~(46)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(51) ~~(47)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(52) ~~(48)~~ Transfer. The movement of a patient to a hospital at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice.

(53) ~~(49)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(50) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(54) ~~(51)~~ Voluntary Delivery. The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a birthing center with any birthing center employee or member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255 and 68-11-1802.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed January 3, 2006; effective March 19, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-24-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local government unit, or any division, department, board or agency thereof shall establish, conduct, operate, or maintain in the State of Tennessee any birthing center without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure. Licenses are not transferable or assignable and

(Rule 1200-08-24-.10, continued)

an opportunity to inspect the file before entering into any monetary agreement with the facility.

(a) Local fire safety inspections.

(b) Local building code inspections, if any.

(c) Fire marshal reports.

(d) Department licensure and fire safety inspections and surveys.

(e) Department quality assurance surveys, including follow-up visits, and certification inspections, if any.

(f) Federal Health Care Financing Administration surveys and inspections, if any.

(g) Orders of the Commissioner or Board, if any.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed April 11, 2003; effective June 25, 2003. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-24-.11 PATIENT RIGHTS.

(1) Each patient has at least the following rights:

(a) To privacy in treatment and personal care;

(b) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department and the Tennessee Department of Human Services, Adult Protective Services;

(c) To refuse treatment. The patient must be informed of the consequences of that decision, the refusal and its reason must be reported to the physician and documented in the medical record;

(d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record; and

(e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The birthing center must have policies to govern access and duplication of the patient's record.

(2) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment, including resuscitative services. This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed January 3, 2006; effective March 19, 2006.*

1200-08-24-.12 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each birthing center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in

(Rule 1200-08-24-.12, continued)

accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and
2. no agent or guardian has been appointed, or
3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;
2. the patient's adult child;
3. the patient's parent;
4. the patient's adult sibling;
5. any other adult relative of the patient; or
6. any other adult who satisfies the requirements of 1200-08-24-.12(16)(d).

(Rule 1200-08-24-.12, continued)

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-24-.12(16)(c) thru 1200-08-24-.12(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-24-.12(16)(m):

(Rule 1200-08-24-.12, continued)

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-24-.12(20) thru 1200-08-24-.12(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(Rule 1200-08-24-.12, continued)

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-24-.12(20) thru 1200-08-24-.12(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(Rule 1200-08-24-.12, continued)

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

(Rule 1200-08-24-.12, continued)

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(Rule 1200-08-24-.12, continued)

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest

(Rule 1200-08-24-.12, continued)

in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815 .* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed January 3, 2006; effective March 19, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-24-.13 DISASTER PREPAREDNESS.

(1) Physical Facility and Community Emergency Plans.

(a) Every birthing center shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills.

(b) The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Plans that provide for the relocation of patients to other healthcare facilities must have written agreements for emergency transfers. Their agreements may be mutual, i.e., providing for transfer either way.

(c) Copies of the plan(s), either complete or outlines, shall be available to all staff. Provisions that have security implications may be omitted from the outline versions. Familiarization information shall be included in employee orientation sessions and more detailed instructions must be included in continuing education programs. Records of orientation and education programs must be maintained for at least three (3) years.

(d) Drills of the fire safety plan shall be conducted at least once a year on each major work shift, for a minimum of three times a year for each facility. A combined drill of the other internal emergency plans shall be conducted at least once a year. The risk focus may vary by drill. Both types of drills are for the purposes of educating staff, resource determination, testing personal safety provisions and communications with other facilities and community agencies. Records which document and evaluate these drills must be maintained for at least three (3) years.

(e) As soon as possible, real situations that result in a response by local authorities must be documented. This includes a critique of the activation of the plan. Actual documented situations that provided educational and training value may be substituted for a drill.

(2) Emergency Planning with Local Government Authorities.

(a) All birthing centers shall establish and maintain communications with the local office of the Tennessee Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

(Rule 1200-08-24-.13, continued)

(b) A file of documents demonstrating communications and cooperation with the local agency must be maintained.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998.*

1200-08-24-.14 APPENDIX I

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

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

(This space intentionally left blank)

(Rule 1200-08-24-.14, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-24-.14, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-24-.14, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date**	**MD/NP/CNS/PA Phone Number:**
	NP/CNS/PA (Signature at Discharge)	

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-24-.14, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-24-.14, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address:_____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

(Rule 1200-08-24-.14, continued)

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

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

Please sign on page 2

(Rule 1200-08-24-.14, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document

(Rule 1200-08-24-.14, continued)

- Provide a copy to the person(s) you named as your health care agent

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805. ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

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

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1200-08-25-.01 PURPOSE.

(1) The purpose of assisted-care living services is to:

(a) Promote the availability of appropriate residential facilities for the elderly and adults with disabilities in the least restrictive and most homelike environment;

(b) Provide assisted-care living services to residents in facilities by meeting each individual's medical and other needs safely and effectively; and

(c) Enhance the individual's ability to age in place while promoting personal individuality, respect, independence, and privacy.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed January 24, 2006; effective April 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

1200-08-25-.02 DEFINITIONS.

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ "Activities of Daily Living (ADL's)" means those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, ambulating, and medication management.

~~(2) "Administering medication" means the direct application of a single dose of a medication to the body of a resident by injection, inhalation, ingestion, topical application or by any other means.~~

(3) "Administering Medication" means the direct application of a single dose of medication to

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

the body of a resident by injection, inhalation, ingestion, topical application or by any other means and the placement of a single dose of medication into a container.

(4) ~~(3)~~ "Administrator" means a natural person designated by the licensee to have the authority and responsibility to manage the ACLF and who is appropriately certified as an assisted-care living facility administrator or is currently licensed in Tennessee as a nursing home administrator as required by T.C.A. §§ 63-16-101, et seq.

(5) ~~(4)~~ "Adult" means a person 18 years of age or older.

(6) ~~(5)~~ "Ambulatory" means the resident's ability to bear weight, pivot and safely walk with the use of a cane, walker, or other mechanical supportive device with or without the minimal assistance of another person. The resident must be physically and mentally capable of self-preservation by evacuating in response to an emergency. A resident who requires a wheelchair must be capable of transferring to and propelling the wheelchair independently.

(7) ~~(6)~~ "Assisted-care living facility (ACLF)" means a building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services.

(8) "Assistance with Self-Administration of Medication" means assistance in reading labels, opening medication containers or packaging, reminding residents of their medication, or observing the resident while taking medication in accordance with the plan of care.

(9) ~~(7)~~ "Assisted-care living facility resident" or "resident" means primarily an aged person who requires domiciliary care, and who upon admission to the facility, if not ambulatory, is capable of self-transfer from the bed to a wheelchair or similar device and is capable of propelling such wheelchair or similar device independently. Such a resident may require one or more of the following services: room and board, assistance with non-medical activities of daily living, administration of typically self-administered medications, and medical services subject to the limitations of these rules.

(10) ~~(8)~~ "Assessment" means a procedure for determining the nature and extent of the problem(s) and needs of a resident or potential resident to ascertain if the ACLF can adequately address those problems, meet those needs, and secure information for the use in the development of the individual care plan.

(11) ~~(9)~~ "Cardiopulmonary resuscitation (CPR)" means the administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(12) ~~(10)~~ "Continuous nursing care" means round-the-clock observation, assessment, monitoring, supervision, or provision of nursing services that can only be performed by a licensed nurse.

(13) ~~(11)~~ "Distinct part" means a unit or part thereof that is organized and operated to give a distinct type of care within the larger organization which renders other types or levels of care. "Distinct" denotes both organizational and physical separateness. A distinct part of an ACLF must be physically identifiable and be operated distinguishably from the rest of the institution. It must consist of all the beds within that unit such as a separate building, floor, wing or ward. Several rooms at one end of a hall or one side of a corridor is acceptable as a distinct part of an ACLF.

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

~~(12) "Do Not Resuscitate (DNR) Order" means a written order entered by the resident's treating physician in the resident's medical record which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation~~.

(14) "Do-Not-Resuscitate Order (DNR)" means a written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) ~~(13)~~ "Emergency" means any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.

(16) ~~(14)~~ "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(17) ~~(15)~~ "Health care decision" means an individual's consent, refusal of consent or withdrawal of consent to health care.

(18) ~~(16)~~ "Health care decision-maker" means that in the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant T.C.A. § 68-11-1806, or the individual's designated physician pursuant to T.C.A. § 68-11-1802(a)(4).

(19) ~~(17)~~ "Infectious waste" means solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure could result in an infectious disease.

(20) ~~(18)~~ "Licensed health care professional" means any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to Tennessee Code Annotated §§ 63-7-101 et seq.), dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, clinical social worker, speech-language pathologist, and emergency service personnel.

(21) ~~(19)~~ "Licensee" means the person, association, partnership, corporation, company or public agency to which the license is issued.

(22) ~~(20)~~ "Life threatening or serious injury" means an injury requiring the resident to undergo significant diagnostic or treatment measures.

(23) ~~(21)~~ "Medical record" means documentation of medical histories, nursing and treatment records, care needs summaries, physician orders, and records of treatment and medication ordered and given which must be maintained by the ACLF, regardless of whether such services are rendered by ACLF staff or by arrangement with an outside source.

(24) (22) "Medically inappropriate treatment" means resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments that cannot be expected to achieve the expressed goals of the informed resident.

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

(25) "Misappropriation of Patient/Resident Property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(26) "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(27) ~~(23)~~ "NFPA" means the National Fire Protection Association.

~~(24) "Patient abuse" means patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(28) ~~(25)~~ "Person" means an individual, association, estate, trust, corporation, partnership, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(29) ~~(26)~~ "Personal services" means those services rendered to residents who need supervision or assistance in activities of daily living. Personal services do not include nursing or medical care.

(30) "Physician Assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(31) "Physician Orders for Scope of Treatment" or "POST' means written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

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

(32) ~~(27)~~ "Power of Attorney for Health Care" means the legal designation of an agent to make health care decisions for the individual granting such power under T.C.A. Title 34, Chapter 6, Part 2.

(33) ~~(28)~~ "Primarily aged" means that a minimum of fifty-one percent (51%) of the population of the facility is at least sixty- two (62) years of age.

(34) ~~(29)~~ "Resident sleeping unit" means a single unit providing sleeping facilities for one or more persons. Resident sleeping units can also include permanent provisions for living, eating and sanitation.

(35) ~~(30)~~ "Responsible attendant" means the individual person designated by the licensee to provide personal services to the residents.

(36) ~~(31)~~ "Secured unit" means a distinct part of an ACLF where the residents are intentionally denied egress by any means.

~~(32) "Self-administration of medication" means assistance in reading labels, opening dosage packaging, reminding residents of their medication, or observing the resident while taking medication in accordance with the plan of care.~~

(37) "Self-Administration of Medication" means the ability to administer medicine to oneself without assistance other than receiving help with reading labels or with physically opening the container or packaging, being reminded of one's medication, or being observed while taking medication in accordance with the plan of care.

(38) ~~(33)~~ "Supervising health care provider" means the health care provider who has undertaken primary responsibility for an individual's health care.

(39) ~~(34)~~ "Surrogate" means an individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident pursuant to T.C.A. § 68-11-1806.

(40) ~~(35)~~ "Treating health care provider" means a health care provider directly or indirectly involved in providing health care to a resident at the time such care is needed by the resident.

~~(36) "Universal Do Not Resuscitate Order" means a written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, and 68-11-211.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-25-.03 LICENSING REQUIREMENTS.

(1) An applicant for an ACLF license shall submit the following to the office of the Board for Licensing Health Care Facilities:

(a) A completed application on a form approved by the Board;

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

T.C.A. § 68-11-201(4)(B) $0-$1
(Provision of Room and Board and
Non-Medical Living Assistance Services)

T.C.A. § 68-11-201(4)(C) $0-$1
(Provision of Medical and other
Professional Services;
Medicare Services;
Oversight of Medical Services;
Plan of Care & Assessment;
Personal and Medical Records; and,
Fire Safety)

T.C.A. § 68-11-213(i)(2) $0-$3000
(Admission or Retention of Inappropriately
Placed Resident.)
Each resident shall constitute a separate violation.)

T.C.A. § Section 68-11-213(i)(1) $0-$5000
(Operating ACLF without Required License.
Each day of operation shall constitute a separate violation.)

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

(a) Willfulness of the violation;

(b) Repetitiveness of the violation;

(c) Magnitude of the risk of harm caused by the violation.

(6) Each violation of any statute, rule or order enforceable by the Board shall constitute a separate and distinct offense and may render the ACLF committing the offense subject to a separate penalty for each violation.

(7) A licensee may appeal any disciplinary action taken against it in accordance with the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, *et seq.*

(8) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

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

1200-08-25-.06 ADMINISTRATION.

(1) Each ACLF shall meet the following staffing and procedural standards:

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

(a) Staffing Requirements:

1. The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.

2. If the licensee is a natural person, the licensee shall be at least eighteen (18) years of age, of reputable and responsible character, able to comply with these rules, and must maintain financial resources and income sufficient to provide for the needs of the residents, including their room, board, and personal services.

3. An ACLF shall have an identified responsible attendant who is alert and awake at all times and a sufficient number of employees to meet the residents' needs, including medical services as prescribed. The responsible attendant and direct care staff must be at least eighteen (18) years of age and capable of complying with statutes and rules governing ACLFs.

4. An ACLF shall have a licensed nurse available as needed.

5. An ACLF shall employ a qualified dietitian, full time, part-time, or on a consultant basis.

6. An ACLF may not employ an individual listed on the Abuse Registry maintained by the Department of Health.

(b) Policies and Procedures:

1. An ACLF shall have a written statement of policies and procedures outlining the facility's responsibilities to its residents, any obligation residents have to the facility, and methods by which residents may file grievances and complaints.

2. An ACLF shall develop and implement an effective facility-wide performance improvement plan that addresses plans for improvement for self-identified deficiencies and documents the outcome of remedial action.

3. An ACLF shall develop a written policy, plan or procedure concerning a subject and adhere to its provisions whenever required to do so by these rules. A licensee that violates its own policy established as required by these rules and regulations also violates the rules and regulations establishing the requirement.

4. An ACLF shall develop a written policy and procedure governing smoking practices of residents.

(i) Residents of the facility are exempt from the smoking prohibition that otherwise applies to the ACLF.

(ii) Smoke from permissible smoking areas shall not infiltrate into areas where smoking is prohibited.

5. An ACLF shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(c) An ACLF shall keep a written up-to-date log of all residents that can be produced in the event of an emergency.

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

(d) An ACLF shall allow pets in the ACLF only when they are not a nuisance and do not pose a health hazard. Plans for pet management must be approved by the Department.

(e) No person associated with the licensee or ACLF shall act as a court-appointed guardian, trustee, or conservator for any resident of the ACLF or any of such resident's property or funds, except as provided by rule 1200-08-25-.14(1)(i).

(f) An ACLF shall not retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, the Adult Protective Services, or the Comptroller of the State Treasury. An ACLF shall neither retaliate nor discriminate, because any person lawfully provides information to these authorities, cooperates with them, or is subpoenaed to testify at a hearing involving them.

(2) In the event a resident dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances.

(a) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;

(b) The nurse is licensed by the Tennessee Board of Nursing; and

(c) The nurse is employed by the ACLF in which the deceased resided.

(3) In the event that resident, receiving services of a Medicare certified hospice program licensed by the state, dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances:

(a) The deceased was suffering from a terminal illness;

(b) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;

(c) The nurse is licensed by the Tennessee Board of Nursing; and

(d) The nurse is employed by the hospice program from which the deceased had been receiving hospice services.

(4) An ACLF shall post the following at the main public entrance:

(a) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the Division of Adult Protective Services. The statement shall include the statewide toll-free number for the Division and the telephone number for the local district attorney's office. The posting shall be on a sign no smaller than eleven inches by seventeen inches. (This same information shall be provided to each resident in writing upon admission to any facility);

(b) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline for immediate assistance, with that number printed in boldface type, and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height;

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

(c) A statement regarding whether it has liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height; and

(d) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(e) A statement that any person who has experienced a problem with a specific licensed ACLF may file a complaint with the Division of Health Care Facilities. The posting shall include the statewide toll-free telephone number for the Division's centralized complaint intake unit.

(5) Infection Control

(a) An ACLF shall ensure that neither a resident nor an employee of the ACLF with a reportable communicable disease shall reside or work in the ACLF unless the ACLF has a written protocol approved by the Board's administrative office.

(b) An ACLF shall have an annual influenza vaccination program which shall include at least:

~~1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;~~

1. The offer of influenza vaccination to all staff and independent practitioners or acceptance of documented evidence of vaccination from another vaccine source or facility. The ACLF will encourage all staff and independent practitioners to obtain an influenza vaccination.

2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;

~~3. Education of all direct care personnel about the following:~~

3. Education of all employees about the following:

(i) Flu vaccination;

(ii) Non-vaccine control measures; and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage.

(c) An ACLF and its employees shall adopt and utilize standard precautions in accordance with guidelines established by the Centers for Disease Control and Prevention (CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

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

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each resident contact if hands are not visibly soiled;

2. Use of gloves during each resident contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves shall be changed before and after each resident contact;

3. Use of either non-antimicrobial soap and water or antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

   (i) Types of resident care activities that can result in hand contamination;

   (ii) Advantages and disadvantages of various methods used to clean hands;

   (iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from residents; and

   (iv) Morbidity, mortality, and costs associated with health care associated infections.

(d) An ACLF shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

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

Authority: *T.C.A. §§ 39-17-1804, 39-17-1805, 68-3-511, 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-254, 68-11-268, and 71-6-121.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

1200-08-25-.07 SERVICES PROVIDED.

(1) An ACLF may provide medical services as follows:

(a) Administer medications to residents that are typically self-administered as subject to limitations described within these rules and regulations.

(b) All other medical services prescribed by the physician that could be provided to a private citizen in the citizen's home, including, but not limited to:

1. Part-time or intermittent nursing care;

2. Various therapies;

3. Podiatry care;

4. Medical social services;

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

5. Medical supplies;

6. Durable medical equipment; and

7. Hospice services.

~~(c) The administration of self-administered medications excluding intravenous injections that may only be administered to:~~

(c) Intravenous medications may only be administered to:

1. Existing residents who receive them on an intermittent basis; and

2. Residents receiving hospice care.

(2) Medical services in an ACLF shall be provided by:

(a) Appropriately licensed or qualified staff of an ACLF;

(b) Appropriately licensed or qualified contractors of an ACLF;

(c) A licensed home care organization;

(d) Another appropriately licensed entity; or

(e) Appropriately licensed staff of a nursing home.

(3) Oversight of medical services in an ACLF shall be consistent with oversight provided in private residential settings as defined through rules and regulations promulgated by the applicable licensing boards and shall ensure quality of care to residents.

(4) Medicare reimbursable services shall be provided to an ACLF resident by a certified Medicare provider.

(5) Resident medication. An ACLF shall:

(a) Ensure that medication shall be self-administered in accordance with the resident's plan of care;

(b) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care; and

(c) Store all medications so that no resident can obtain another resident's medication.

~~(6) An ACLF shall dispose of medications as follows:~~

~~(a) Upon discharge or death of a resident, unused medications shall be released to the resident, family member, or legal representative unless specifically prohibited by the attending physician or other authorized healthcare provider.~~

~~(b) Any scheduled drug that is misbranded, expired, deteriorated, or not kept under proper conditions or in containers with illegible or missing labels shall be returned to the pharmacy within five (5) working days after discovery for proper disposition by a licensed pharmacist.~~

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

~~(c) Any non-scheduled drug or device that is misbranded, expired, deteriorated, or not kept under proper conditions or in containers with illegible or missing labels shall be properly disposed of at the ACLF in the presence of another licensed or certified professional.~~

(6) An ACLF shall dispose of medications as follows:

(a) Upon discharge of a resident, unused prescription medication shall be released to the resident, the resident's family member, or the resident's legal representative, unless specifically prohibited by the attending physician.

(b) Upon death of a resident, unused prescription medication must be destroyed in the manner outlined, and by the individuals designated, in the facility's medication disposal policy, unless otherwise requested by the resident's family member or the resident's legal representative and accompanied by a written order by a physician. The ACLF's medication disposal policy shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(c) The ACLF shall properly dispose of prescription medication administered by the facility in accordance with the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(d) The ACLF may dispose of prescription medication that is self-administered by the resident according to the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines, or the facility may provide information to the resident's family member or the resident's legal representative regarding the proper method to dispose of the medication.

(e) If the resident is a hospice patient, hospice shall be responsible for disposing of the prescription medication upon the death of the resident.

(f) The ACLF's medication disposal policy shall be performed by one (1) licensed health care professional and either the facility's administrator, a second licensed health care professional, or a medication aide certified.

(g) The ACLF's medication disposal policy shall also address the disposal of scheduled drugs, non-scheduled drugs, and devices that are misbranded, expired, deteriorated, not kept under proper conditions, and kept in containers with illegible or missing labels.

(7) An ACLF shall provide personal services as follows:

(a) Each ACLF shall provide each resident with at least the following personal services:

1. Protective care;
2. Safety when in the ACLF;
3. Daily awareness of the individual's whereabouts;
4. The ability and readiness to intervene if crises arise;
5. Room and board; and
6. Non-medical living assistance with activities of daily living.

(b) Laundry services. An ACLF shall:

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

1. Provide arrangements for laundry of ACLF linens and residents' clothing;

2. Provide appropriate separate storage areas for soiled linens and residents' clothing; and

3. Maintain clean linens in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary.

(c) Dietary services.

1. An ACLF shall have organized dietary services that are directed and staffed by adequate qualified personnel. An ACLF may contract with an outside food management company if the company has a dietitian who serves the ACLF on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section while providing for constant liaison with the ACLF for recommendations on dietetic policies affecting resident treatment.

2. An ACLF shall have an employee who:

   (i) Serves as director of the food and dietetic service;

   (ii) Is responsible for the daily management of the dietary services and staff training; and

   (iii) Is qualified by experience or training.

3. An ACLF shall ensure that menus meet the needs of the residents as follows:

   (i) The practitioner or practitioners, as qualified within the scope of practice, responsible for the care of the residents shall prescribe therapeutic diets as necessary.

   (ii) An ACLF shall meet nutritional needs, in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

   (iii) An ACLF shall have a current therapeutic diet manual approved by the dietitian readily available to all ACLF personnel.

   (iv) Menus shall be planned one week in advance.

4. An ACLF shall:

   (i) Provide at least three (3) meals constituting an acceptable and/or prescribed diet per day. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140°F. or above) or cold (41°F. or less) as appropriate. The food must be adapted to the habits, preferences and physical abilities of the residents. Additional nourishment and/or snacks shall be provided to residents with special dietary needs or upon request.

   (ii) Provide sufficient food provision capabilities and dining space.

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

(iii) Maintain and properly store a forty-eight (48) hour food supply at all times.

(iv) Provide appropriate, properly-repaired equipment and utensils for cooking and serving food in sufficient quantity to serve all residents.

5. An ACLF shall maintain a clean and sanitary kitchen.

6. Employees shall wash and sanitize equipment, utensils and dishes after each use.

(d) An ACLF shall provide a suitable and comfortable furnished area for activities and family visits. Furnishings shall include a calendar and a functioning television set, radio, and clock.

(e) An ACLF shall provide current newspapers, magazines or other reading materials.

(f) An ACLF shall have a telephone accessible to all residents to make and receive personal telephone calls twenty-four (24) hours per day.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1999; effective February 8, 1999. Amendment filed August 26, 2002; effective November 9, 2002. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

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

(1) An ACLF shall not admit or permit the continued stay of any ACLF resident who has any of the following conditions:

(a) Requires treatment for stage III or stage IV decubitus ulcers or with exfoliative dermatitis;

(b) Requires continuous nursing care;

(c) Has an active, infectious and reportable disease in a communicable state that requires contact isolation;

(d) Exhibits verbal or physical aggressive behavior which poses an imminent physical threat to self or others, based on behavior, not diagnosis;

(e) Requires physical or chemical restraints, not including psychotropic medications for a manageable mental disorder or condition; or

(f) Has needs that cannot be safely and effectively met in the ACLF.

(2) An ACLF resident shall be discharged and transferred to another appropriate setting such as home, a hospital, or a nursing home when the resident, the resident's legal representative, ACLF administrator, or the resident's treating physician determine that the ACLF cannot safely and effectively meet the resident's needs, including medical services.

(a) The Board may require that an ACLF resident be discharged or transferred to another level of care if it determines that the resident's needs, including medical services, cannot be safely and effectively met in the ACLF.

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

(3) Except for the limitations set forth in (4)(a) and (4)(b) of this rule, an ACLF may admit and permit the continued stay of an individual meeting the level of care requirement for nursing facility services, if:

(a) The resident's treating physician certifies in writing that the resident's needs, including medical services, can be safely and effectively met by care provided in the ACLF; and

(b) The ACLF can provide assurances that the resident can be timely evacuated in case of fire or emergency.

(4) An ACLF shall not admit, but may permit the continued stay of residents who require:

(a) The following treatments on an intermittent basis of up to three (3) twenty-one (21) day periods. The resident's treating physician must certify that treatment can be safely and effectively provided by the ACLF for the last two (2) twenty-one (21) day periods.

1. Nasopharyngeal or tracheotomy aspiration;

2. Nasogastric feedings;

3. Gastrostomy feedings; or

4. Intravenous therapy or intravenous feedings.

(b) The treatments described in parts (1)-(4) above can be provided on an on-going basis if:

1. The resident is receiving hospice services;

2. The resident does not qualify for nursing facility level care and the board grants a waiver; or

3. The resident is able to care for the specified conditions without assistance of facility personnel or other appropriately licensed entity. Such a resident may be admitted or permitted to continue as a resident of the ACLF.

(5) An ACLF resident qualifying for hospice care shall be able to receive hospice care services and continue as a resident if the resident's treating physician certifies that such care can be appropriately provided in the ACLF.

(a) In the event that the resident is able to receive hospice services in an ACLF, the resident's hospice provider and the ACLF shall be jointly responsible for a plan of care that is prepared pursuant to current hospice guidelines promulgated by the Centers for Medicaid and Medicare and ensures both the safety and well-being of the resident's living environment and provision of the resident's health care needs.

(b) The hospice provider shall be available to assess, plan, monitor, direct and evaluate the resident's palliative care with the resident's treating physician and in cooperation with the ACLF.

(6) An ACLF shall:

(a) Be able to identify at the time of admission and during continued stay those residents whose needs for services are consistent with these rules and regulations, and those residents who should be transferred to a higher level of care;

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

(b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules;

(c) Have an accurate written statement regarding fees and services which will be provided residents upon admission;

(d) Give a thirty (30) day notice to all residents before making any changes in fee schedules;

(e) Ensure that residents see a physician for acute illness or injury and are transferred in accordance with any physician's orders;

(f) Provide to each resident at the time of admission a copy of the resident's rights for the resident's review and signature;

(g) Have written policies and procedures to assist residents in the proper development, filing, modification and rescission of an advance directive, a living will, a do-not-resuscitate order, and the appointment of a durable power of attorney for health care;

(h) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative, whether the ACLF has liability insurance and the identity of the primary insurance carrier. If the ACLF is self-insured, its statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims;

(i) Document evidence of annual vaccination against influenza for each resident, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccine, unless such vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident; and

(j) Document evidence of vaccination against pneumococcal disease for all residents who are sixty-five (65) years of age or older, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

(k) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative a copy of the medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(7) An ACLF shall have documented plans and procedures to show evacuation of all residents.

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

(8) An ACLF may not retain a resident who cannot evacuate within thirteen (13) minutes unless the ACLF complies with Chapter 19 of the 2006 edition of the NFPA Life Safety Code, and the Institutional Unrestrained Occupancy of the 2006 edition of the International Building Code.

(9) An ACLF utilizing secured units shall provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents at its annual survey:

(a) Documentation that an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member (or patient care advocate) has evaluated each secured resident prior to admittance to the unit;

(b) Ongoing and up-to-date documentation that each resident's interdisciplinary team has performed a quarterly review as to the appropriateness of placement in the secured unit;

(c) A current listing of the number of deaths and hospitalizations, with diagnoses, that have occurred on the unit;

(d) A current listing of all unusual incidents and/or complications on the unit;

(e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week, at all times;

(f) A formulated calendar of daily group activities scheduled, including a resident attendance record for the previous three (3) months;

(g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and

(h) Documentation showing that 100% of the staff working on the unit receives annual in-service training which shall include, but not be limited to, the following subject areas:

1. Basic facts about the causes, progression and management of Alzheimer's disease and related disorders;

2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and

5. Communicating with families and other persons interested in the resident.

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

1200-08-25-.09 BUILDING STANDARDS.

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

(p) To participate, or to refuse to participate, in community activities, including cultural, educational, religious, community service, vocational and recreational activities;

(q) To not be required to perform services for the ACLF. The resident and licensee may mutually agree, in writing, that the resident may perform certain activities or services as part of the fee for his or her stay; and

(r) To execute, modify, or rescind a Living Will, Do-Not-Resuscitate Order or advance directive.

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

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

(1) Pursuant to this rule, each ACLF shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or it may limit the power of the agent, and it may include individual instructions. An advance directive that makes no limitation on the agent's authority shall authorize the agent to make any health care decision the resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the resident's estate upon his or her death. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the agent's authority becomes effective only upon a determination that the resident lacks capacity, and it ceases to be effective upon a determination that the resident has recovered capacity.

(5) An ACLF may use the model advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

(6) The resident's designated physician shall make a determination that a resident either lacks or has recovered capacity. The designated physician shall also have authority to make a determination that another condition exists that affects an individual instruction or the authority of an agent. To make such determinations the resident's designated physician shall be authorized to consult with such other persons as the physician may deem appropriate.

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

(7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) An ACLF shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with a previously executed advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing, either orally or in writing, the supervising health care provider.

(b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:

1. the designated physician determines that the resident lacks capacity, and
2. there is not an appointed agent or guardian; or
3. the agent or guardian is not reasonably available.

(c) In the case of a resident who lacks capacity, the resident's current clinical record of the ACLF shall identify his or her surrogate.

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

(d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the resident's spouse, unless legally separated;
2. the resident's adult child;
3. the resident's parent;
4. the resident's adult sibling;
5. any other adult relative of the resident; or
6. any other adult who satisfies the requirements of 1200-08-25-.15(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the resident's known wishes or best interests;
2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
3. The proposed surrogate's demonstrated care and concern;
4. The proposed surrogate's availability to visit the resident during his or her illness; and
5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-25-.15(16)(c) thru 1200-08-25-.15(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

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

(j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known.

(k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-25-.15(16)(m):

1. A designated surrogate may not be one of the following:

   (i) the treating health care provider;

   (ii) an employee of the treating health care provider;

   (iii) an operator of a health care institution; or

   (iv) an employee of an operator of a health care institution; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.

(m) A designated surrogate may be an employee of the treating health care provider or an employee of an operator of a health care institution if:

1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual

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

instruction or the authority of an agent, guardian, or surrogate, shall promptly record such a determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.

(19) Except as provided in 1200-08-25-.15(20) thru 1200-08-25-.15(22), a health care provider or institution providing care to a resident shall:

(a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and

(b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to the institution's policy which is based on reasons of conscience, and

(b) the institution timely communicated the policy to the resident or to a person then authorized to make health care decisions for the resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-25-.15(20) thru 1200-08-25-.15(22) shall:

(a) promptly inform the resident, if possible, and/or any other person then authorized to make health care decisions for the resident;

(b) provide continuing care to the resident until he can be transferred to another health care provider or institution or it is determined that such a transfer is not possible;

(c) immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision unless the resident or person then authorized to make health care decisions for the resident refuses assistance; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

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

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct if such identification is made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.~~

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

~~(c) Universal Do Not Resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a universal Do not Resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal Do Not Resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal DNR when transferring a resident from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

~~(g) Valid Do Not Resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.~~

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

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

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency

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

medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

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

1200-08-25-.16 DISASTER PREPAREDNESS.

(1) An ACLF shall have in effect and available for all supervisory personnel and staff written copies of the following disaster, refuge and/or evacuation plans readily available at all times:

(a) Fire Safety Procedures Plan shall include:

1. Minor fires;
2. Major fires;
3. Fighting the fire;
4. Evacuation procedures; and

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

5. Staff functions.

(b) Tornado/Severe Weather Procedures Plan shall include:

1. Staff duties; and
2. Evacuation procedures.

(c) Bomb Threat Procedures Plan shall include:

1. Staff duties;
2. Search team, searching the premises;
3. Notification of authorities;
4. Location of suspicious objects; and,
5. Evacuation procedures.

(d) Flood Procedure Plan, if applicable, shall include:

1. Staff duties;
2. Evacuation procedures; and
3. Safety procedures following the flood.

(e) Severe Cold Weather and Severe Hot Weather Procedure Plans shall include:

1. Staff duties;
2. Equipment failures;
3. Evacuation procedures; and
4. Emergency food service.

(f) Earthquake Disaster Procedures Plan shall include:

1. Staff duties;
2. Evacuation procedures;
3. Safety procedures; and
4. Emergency services.

(2) An ACLF shall comply with the following:

(a) Maintain a detailed log with staff signatures designating training each employee receives regarding disaster preparedness.

(b) Train all employees annually as required in the plans listed above and keep each employee informed with respect to the employee's duties under the plans.

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

(c) Exercise each of the plans listed above annually.

(3) An ACLF shall participate in the Tennessee Emergency Management Agency local/county emergency plan on an annual basis. Participation includes:

(a) filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency; and

(b) maintaining documentation of participation that shall be made available to survey staff as proof of participation.

(4) ACLFs which elect to have an emergency generator shall ensure that the generator is designed to meet the ACLF's HVAC and essential needs and shall have a minimum of twenty-four (24) hours of fuel designed to operate at its rated load. This requirement shall be coordinated with the Disaster Preparedness Plan or with the local resources.

(a) All generators shall be exercised for thirty (30) minutes each month under full load, including automatic and manual transfer of equipment.

(b) The emergency generator shall be operated at the existing connected load and not on dual power. The ACLF shall maintain a monthly log and have trained staff familiar with the generator's operation.

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

1200-08-25-.17 APPENDIX I.

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

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

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

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

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident	☐ Patient's preferences
☐ Health care agent	☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Court-appointed guardian	☐ Medical indications
☐ Health care surrogate	☐ (Other) _____
☐ Parent of minor	
☐ Other: _____ (Specify)	

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

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

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

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

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-25-.17, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

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

Please sign on page 2

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

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

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

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

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

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

CHAPTER 1200-08-26
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES

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1200-08-26-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Administrator. A person who:

(a) Is a licensed physician with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(3) ~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~ Agency. A Home Care Organization providing home health services.

(6) ~~(5)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) ~~(6)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(8) ~~(7)~~ Branch Office. A location or site from which a home care organization provides home health services within a portion of the total geographic area served by the licensed organization. The branch office is part of the home care organization providing home health services and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the requirements for licensing as a home care organization providing home health

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

services. At all times a branch office must operate solely under the name of the licensed organization.

(9) ~~(8)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) ~~(10)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) ~~(11)~~ Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(13) ~~(12)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(14) ~~(13)~~ Competent. A patient who has capacity.

(15) ~~(14)~~ Department. The Tennessee Department of Health.

(16) ~~(15)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

~~(16) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(17) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(18) ~~(17)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(19) ~~(18)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(20) ~~(19)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

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

(21) ~~(20)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(22) ~~(21)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(23) ~~(22)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(24) ~~(23)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-26-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(25) ~~(24)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(26) ~~(25)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(27) ~~(26)~~ Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(28) ~~(27)~~ Home Health Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as extension of therapy services, personal care regarding nutritional needs, ambulation and exercise, and household services essential to health care at home.

(29) ~~(28)~~ Home Health Service. As defined by T.C.A. § 68-11-201, "home health service" means a service provided an outpatient by an appropriately licensed health care professional or an appropriately qualified staff member of a licensed home care organization in accordance with orders recorded by a physician, and which includes one (1) or more of the following:

(a) Skilled nursing care including part-time or intermittent supervision;

(b) Physical, occupational or speech therapy;

(c) Medical social services;

(d) Home health aide services;

(e) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of or through the provision of, the services described in subparagraph (a) through (d) ; and

(f) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home care organization at a hospital, nursing home

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

facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in the individual's home, or which are furnished at such facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(g) Home health service does not include services provided in the home by a sole practice therapist, when such services are within the scope of the therapist's license and incidental to services provided by the sole practice therapist in the office. A sole practice therapist means a therapist licensed under Title 63, Chapter 13 or 17, who is in sole practice and not in a business arrangement with any other therapist or other healthcare provider. Sole practice therapists are not excluded from the requirements of professional support services.

(30) ~~(29)~~ Homemaker Service. A non-skilled service in the home to maintain independent living which does not require a physician's order. An agency does not have to be licensed as a home care organization to provide such services.

(31) ~~(30)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(32) ~~(31)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(33) ~~(32)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(34) ~~(33)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(35) ~~(34)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(36) ~~(35)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(37) ~~(36)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(38) ~~(37)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients.

(39) ~~(38)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by the home care organization and under the supervision of a certified master social worker or licensed clinical social worker, in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other organized personnel.

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

(40) ~~(39)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(41) ~~(40)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(42) ~~(41)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(43) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(44) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(45) ~~(42)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

~~(43) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(46) ~~(44)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(47) ~~(45)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(48) ~~(46)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(49) ~~(47)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(50) ~~(48)~~ Physician. A person currently licensed as such by the Tennessee Board of Medical Examinations or currently licensed by the Tennessee Board of Osteopathic Examination. For the purposes of defining "home health services" only, "physician" includes a podiatrist licensed under Title 63, Chapter 3, provided, that any home health service ordered is a follow-up to treatment provided to the patient by the podiatrist. A physician who is licensed to practice medicine, osteopathy or podiatry in a state contiguous to Tennessee may refer a patient residing in this state to a home care organization providing home

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

health services duly licensed under this chapter; however, this shall not be construed as authorizing an unlicensed physician to practice medicine in violation of T.C.A. §§63-6-201, 63-9-104 or 63-3-204, and such a physician shall have previously provided treatment to that patient, and shall have had an ongoing physician-patient relationship with the person for whom the referral is to be made.

(51) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(52) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(53) ~~(49)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(54) ~~(50)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(55) ~~(51)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(56) ~~(52)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(57) ~~(53)~~ Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(58) ~~(54)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(59) ~~(55)~~ Shall or Must. Compliance is mandatory.

(60) ~~(56)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral

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

sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

(61) ~~(57)~~ Speech Therapist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.

(62) ~~(58)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(63) ~~(59)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(64) ~~(60)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(65) ~~(61)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(66) ~~(62)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(67) ~~(63)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(64) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

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

1200-08-26-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation or any state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any Home Care Organization providing Home Health Services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic area specified by the certificate of need or at the time of the original licensing. The name of the agency shall not be changed without first notifying the Department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the agency.

(2) In order to make application for a license:

(Rule 1200-08-26-.03, continued)

(d) How the corrective action will be monitored to ensure that the deficient practice does not recur.

(5) Either failure to submit a plan of correction in a timely manner or a finding by the Department that the plan of correction is unacceptable shall subject the agency's license to possible disciplinary action.

(6) Any licensee or applicant for a license, aggrieved by a decision or action of the Department or Board, pursuant to this chapter, may request a hearing before the Board. The proceedings and judicial review of the Board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq.

(7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed March 1, 2007; effective May 15, 2007.*

1200-08-26-.04 ADMINISTRATION.

(1) The home health agency must organize, manage and administer its home health services to attain and maintain the highest practicable functional capacity for each patient regarding medical, nursing and rehabilitative needs as indicated by the plan of care.

(2) The home health agency shall ensure a framework for addressing issues related to care at the end of life.

(3) The home health agency shall provide a process that assesses pain in all patients. There shall be an appropriate and effective pain management program.

(4) The agency develops and maintains administrative control of any branch office.

(5) The organizational structure, home health services provided, administrative control and lines of authority for the delegation of responsibility down to the patient care level shall be clearly set forth in writing and shall be readily identifiable. Administrative and supervisory functions shall not be delegated to another agency. All home health services not provided directly by the licensed agency shall be monitored and controlled by that agency.

(6) A governing body (or designated persons so functioning) must: assume full legal authority and responsibility for the management and provision of all home health services; fiscal operations; quality assessment and performance improvement programs. The governing body shall appoint a qualified administrator who is responsible for the day-to-day operation of the organization and is responsible for designating people to carry out these functions.

(7) The administrator shall organize and direct the organization's ongoing functions; the professional personnel and the staff; employ qualified personnel and ensure adequate staff education and evaluation for all personnel involved in direct patient care; ensure the accuracy of public information materials and activities; and implement an effective budgeting and accounting system. A person with sufficient experience and training shall

(Rule 1200-08-26-.04, continued)

be authorized in writing to assume temporary duty during the administrator's short-term absence.

(8) An agency shall have a duly qualified administrator accessible during normal operating hours. Any change of administrators shall be reported to the Department within fifteen (15) days.

~~(9) An administrator shall serve no more than one (1) licensed home care organization, which may provide home health, hospice, and/or home medical equipment services.~~

(9) An administrator shall serve no more than one (1) licensed home care organization unless that home care organization provides other categories of home care organization services under the same ownership and at the same location.

(10) The agency shall maintain an office with a working telephone and be staffed during normal business hours.

(11) When licensure is applicable for a particular position of employment, a copy of the current license or the number and renewal number of the employee's current license must be maintained in the employee's personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee. Proof of adequate medical screenings to exclude communicable disease shall be maintained in the file of each employee.

(12) Personnel practices shall be supported by written personnel policies. Personnel records shall include at a minimum: job descriptions, verification of references and credentials, and performance evaluations. Personnel records must be kept current.

(13) An ongoing educational program shall be planned and conducted for the development and improvement of skills of all the organization's personnel engaged in delivery of home health services. Each employee shall receive appropriate orientation to the organization, its policies, the employee's position, and the employee's duties. Records shall be maintained which indicate the subject of and attendance at such staff development programs.

(14) If personnel, under hourly or per visit contracts, are utilized by the agency, there shall be a written contract between such personnel and the organization clearly designating:

(a) That patients are accepted for care only by the agency;

(b) Which home health services are to be provided;

(c) That it is necessary to conform to all applicable organization policies including personnel qualifications;

(d) The responsibility for participating in developing plans of care;

(e) The manner in which home health services will be controlled, coordinated and evaluated by the agency;

(f) The procedures for submitting clinical and progress notes, scheduling visits and periodic patient evaluations; and

(g) The procedures for determining charges and reimbursement.

(Rule 1200-08-26-.04, continued)

(15) Whenever the rules of this chapter require that a licensee develop a written policy, plan, procedure, technique or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. An agency which violates a required policy also violates the rule establishing the requirement.

(16) Policies and procedures shall be consistent with professionally recognized standards of practice.

(17) All agencies shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(18) Each agency utilizing students shall establish policies and procedures for their supervision.

(19) No agency shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, the Department of Human Services Adult Protective Services or the Comptroller of the State Treasury. An agency shall neither retaliate nor discriminate because of information lawfully provided to these authorities, because of a person's cooperation with them or because a person is subpoenaed to testify at a hearing involving one of these authorities.

(20) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(21) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(22) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

Authority: *T.C.A. §§4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010.*

(Rule 1200-08-26-.12, continued)

(b) To have appropriate assessment and management of pain;

(c) To be involved in the decision making of all aspects of their care;

(d) To be free from mental and physical abuse. Should this right be violated, the agency must notify the Department within five (5) business days and the Tennessee Department of Human Services, Adult Protective Services as required by T.C.A. §71-6-101 et seq.;

(e) To refuse treatment. The patient must be informed of the consequences of that decision, and the refusal and its reason must be reported to the physician and documented in the medical record;

(f) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record; and

(g) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The agency must have policies to govern access and duplication of the patient's record.

(2) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment, including resuscitative services. This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed December 2, 2005; effective February 15, 2006.*

1200-08-26-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each home health agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(Rule 1200-08-26-.13, continued)

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(Rule 1200-08-26-.13, continued)

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and
2. no agent or guardian has been appointed, or
3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;
2. the patient's adult child;
3. the patient's parent;
4. the patient's adult sibling;
5. any other adult relative of the patient; or
6. any other adult who satisfies the requirements of 1200-08-26-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
3. The proposed surrogate's demonstrated care and concern;
4. The proposed surrogate's availability to visit the patient during his or her illness; and

(Rule 1200-08-26-.13, continued)

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-26-.13(16)(c) thru 1200-08-26-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-26-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(Rule 1200-08-26-.13, continued)

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-26-.13(20) thru 1200-08-26-.13(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-26-.13(20) thru 1200-08-26-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(Rule 1200-08-26-.13, continued)

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

(Rule 1200-08-26-.13, continued)

2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.

(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.

(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

(Rule 1200-08-26-.13, continued)

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and

(Rule 1200-08-26-.13, continued)

such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

(Rule 1200-08-26-.13, continued)
Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-26-.14 DISASTER PREPAREDNESS.

(1) All agencies shall establish and maintain communications with the local office of the Tennessee Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The agency shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

(2) A file of documents demonstrating communications and cooperation with the local agency must be maintained.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000.*

1200-08-26-.15 APPENDIX I

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

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

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(Rule 1200-08-26-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-26-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-26-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-26-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

(Rule 1200-08-26-.15, continued)

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation:_____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

(Rule 1200-08-26-.15, continued)

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

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

Please sign on page 2

(Rule 1200-08-26-.15, continued)
Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-26-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-27
STANDARDS FOR HOMECARE ORGANIZATIONS
PROVIDING HOSPICE SERVICES

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1200-08-27-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~Administrator. A person who:

(a) Is a licensed physician with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(3) ~~(2)~~Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) ~~(5)~~Agency. A Home Care Organization providing hospice services.

(7) ~~(6)~~Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care or specialized training or experience in bereavement theory and counseling.

(8) ~~(7)~~Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the

(Rule 1200-08-27-.01, continued)

capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) ~~(10)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) ~~(11)~~ Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(13) ~~(12)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(14) ~~(13)~~ Competent. A patient who has capacity.

(15) ~~(14)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(16) ~~(15)~~ Department. The Tennessee Department of Health.

(17) ~~(16)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

~~(17) Do-Not-Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(18) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(19) ~~(18)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(20) ~~(19)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(21) ~~(20)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(22) ~~(21)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(Rule 1200-08-27-.01, continued)

(23) ~~(22)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(24) ~~(23)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(25) ~~(24)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-27-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(26) ~~(25)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(27) (26) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(28) ~~(27)~~ Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(29) ~~(28)~~ Home Health Aide/Hospice Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as an extension of therapy services, personal care regarding nutritional needs, ambulation and exercise, and household services essential to health care at home.

(30) ~~(29)~~ Homemaker Service. A non-skilled service in the home to maintain independent living which does not require a physician's order. An agency does not have to be licensed as a home care organization to provide such services.

~~(30) Hospice Services. As defined by T.C.A. § 68-11-201, "hospice services," means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week. "Hospice services" may also be provided to a non-hospice patient limited to palliative care only.~~

(31) Hospice Services. As defined by T.C.A. § 68-11-201, hospice services means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week pursuant to the patient's Hospice plan of care. A licensed hospice services program may provide services to a non-hospice patient; provided, that services to a non-hospice patient shall be limited to palliative care only.

(32) ~~(31)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(Rule 1200-08-27-.01, continued)

(33) ~~(32)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(34) ~~(33)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(35) ~~(34)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(36) ~~(35)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(37) ~~(36)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(38) ~~(37)~~ Life Threatening or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(39) ~~(38)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients.

(40) ~~(39)~~ Medical Social Services. Medical social services must be provided by a qualified social worker under the direction of a physician, in accordance with the plan of care.

(41) ~~(40)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(42) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(43) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(44) ~~(41)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(45) ~~(42)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(46) ~~(43)~~ Palliative. The reduction or abatement of pain or troubling symptoms, by appropriate coordination of all elements of the hospice care team, to achieve needed relief of distress.

(47) ~~(44)~~ Patient. Hospice patient means only a person who has been diagnosed as terminally ill; been certified by a physician in writing to have an anticipated life expectancy of six (6) months or less; has voluntarily though self or a surrogate requested admission to a hospice;

(Rule 1200-08-27-.01, continued)

and been accepted by a licensed hospice. Patient will also include a non-hospice patient receiving only palliative care.

~~(45) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(48) ~~(46)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(49) ~~(47)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(50) ~~(48)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(51) ~~(49)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(52) ~~(50)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(53) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(54) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(55) ~~(51)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(56) ~~(52)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(Rule 1200-08-27-.01, continued)

(57) ~~(53)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(58) ~~(54)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(59) ~~(55)~~ Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(60) ~~(56)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(61) ~~(57)~~ Respite Care. A short-term period of inpatient care provided to the patient only when necessary to relieve the family members or other persons caring for the patient.

(62) ~~(58)~~ Shall or Must. Compliance is mandatory.

(63) ~~(59)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

(64) ~~(60)~~ Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.

(65) ~~(61)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that religious organization.

(66) ~~(62)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(67) (63) Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(68) ~~(64)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(69) ~~(65)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(70) ~~(66)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(71) ~~(67)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(Rule 1200-08-27-.01, continued)

(72) ~~(68)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(69) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(73) ~~(70)~~ Volunteer. An individual who agrees to provide services to a hospice care patient and/or family member(s), without monetary compensation, in either direct patient care or an administrative role and supervised by an appropriate hospice care employee.

Authority: *T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-27-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation or any state, county or local government unit, or any division, department, board or agency thereof shall establish, conduct, operate or maintain in the State of Tennessee any Home Care Organization providing Hospice Services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic area specified by the certificate of need or at the time of the original licensing. The name of the agency shall not be changed without first notifying the Department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the agency.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the Department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department. Patients shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the agency.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the home care agency providing hospice services to be inspected by a Department surveyor. In the event that deficiencies are noted, the

(Rule 1200-08-27-.05, continued)

(e) Is a non-hospice patient that has been determined to need palliative care only.

(2) Patients shall be accepted to receive hospice services on the basis of a reasonable expectation that the patient's medical, nursing and psychosocial needs can be met adequately by the organization in the patient's regular or temporary place of residence.

(3) Care shall follow a written plan of care established and reviewed by the attending physician, the medical director or physician designee and the interdisciplinary group prior to providing care. Care shall continue under the supervision of the attending physician.

(4) The agency staff shall determine if the patient's needs can be met by the organization's services and capabilities.

(5) Every person admitted for care or treatment to any agency covered by these rules shall be under the supervision of a physician as defined in this chapter who holds a license in good standing. The name of the patient's attending physician shall be recorded in the patient's medical record.

(6) The agency staff shall obtain the patient's written consent for hospice services.

(7) The signed consent form shall be included with the patient's individual clinical record.

(8) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(9) No medication or treatment shall be provided to any patient of an agency except on the order of a physician or dentist lawfully authorized to give such an order.

(10) A medical record shall be developed and maintained for each patient admitted.

(11) No patient shall be involuntarily discharged without a written order from the attending physician or the medical director stating the patient does not meet hospice criteria, or through other legal processes, and timely notification of next of kin and/or the authorized representative.

(12) When a patient is discharged, a summary of the significant findings and events of the patient's care, the patient's condition on discharge and the recommendation and arrangement for future care, if any, is required.

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

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed December 23, 2009; effective March 23, 2010.*

1200-08-27-.06 BASIC AGENCY FUNCTIONS.

~~(1) An organization providing hospice services must ensure that substantially all core services are routinely provided directly by hospice employees. A hospice service program may use contracted staff if necessary to supplement hospice service program employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary~~

(Rule 1200-08-27-.06, continued)

~~circumstances. If contracting is used, the organization providing hospice services must maintain professional, financial and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet the requirements specified in this rule.~~

(1) An organization providing hospice services must ensure that substantially all core services are routinely provided directly by hospice employees. The hospice services program may contract for physician services. The hospice services program may use contracted staff for nursing services, medical social services, and counseling services if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice services program must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of the individuals and services meet the requirements specified in this rule.

(a) Nursing services. The hospice service program must provide nursing care and services by or under the supervision of a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of patients are met.

2. Patient care responsibilities of nursing personnel must be specified.

3. Hospice services must be provided in accordance with recognized standards of practice.

4. A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

(i) The deceased was receiving the services of a licensed home care organization providing Medicare-certified hospice services;

(ii) Death was anticipated, and the attending physician and/or the hospice medical director has agreed in writing to sign the death certificate. Such agreement must be present with the deceased at the place of death;

(iii) The nurse is licensed by the state; and,

(iv) The nurse is employed by the home care organization providing hospice services to the deceased.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice service program, including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the patients to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the patient and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the Plan of Care for the patient and family.

(Rule 1200-08-27-.06, continued)

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the hospice program.

(2) Plan of Care. A written plan of care must be established and maintained for each patient admitted to a hospice program and the care provided must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

~~(b) Review of plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fourteen (14) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.~~

(b) Review of Plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the hospice services required, including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's and family's needs.

(3) Interdisciplinary Group. The organization providing hospice services must designate an interdisciplinary group(s) composed of individuals who provide or supervise the care and services offered by the hospice program:

(a) Composition of Group. The hospice service program must have an interdisciplinary group or groups that include at least the following individuals who are employees of the hospice service program:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

(Rule 1200-08-27-.06, continued)

1. Participation in the establishment of the plan of care;

2. Provision or supervision of hospice care and services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care; and

4. Establishment of policies governing the day-to-day provision of hospice care and services.

(c) If a hospice service program has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in part (b) of this paragraph.

(4) Coordinator. The hospice service program must designate a registered nurse to coordinate the implementation of the plan of care of each patient.

(5) Volunteers. The hospice service program may use volunteers, in defined roles, under the supervision of a designated hospice program employee.

(a) Training. The hospice program must provide appropriate orientation and training that is consistent with acceptable standards of hospice practice.

(b) Role. Volunteers may be used in administrative or direct patient care roles.

1. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

2. Availability of clergy. The hospice service program must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients who request such visits and must advise patients of this opportunity.

(6) Continuation of Care. An organization providing hospice services must assist in coordinating continued care should the patient be transferred or discharged from the hospice program or the organization.

(7) Short Term Inpatient Care. Short term inpatient care is available for pain control, symptom management and respite services, and if not provided directly, must be provided under a legally binding written agreement that meets the requirements of subparagraph (b) of this paragraph in a licensed nursing home, hospital, or residential hospice which meets the following minimum requirements:

(a) Whether provided directly or indirectly, the facility that provides short term inpatient care must provide twenty-four (24) hour nursing services which are sufficient to meet total nursing needs in accordance with the patient's plan of care. Each hospice patient must receive treatments, medications, and diet as prescribed, and must be kept comfortable, clean, well-groomed and protected from accident, injury and infection. Each shift must include a registered nurse (R.N.) who provides direct patient care.

1. Respite services shall be staffed in accordance with the patient's Hospice Plan of Care.

2. The Hospice Plan of Care will state whether a registered nurse is required to provide direct care to the hospice patient.

3. Respite services may be provided in an Assisted Care Living Facility so long as the provisions of Rule 1200-08-27-.06 (7)(b) – (g) are met.

(b) The facility must be designed and equipped for the comfort and privacy of each hospice patient and family member(s) by providing physical space for private patient/family visiting, accommodations for family members to remain with the patient throughout the night, accommodations for family privacy following a patient's death and decor which is home-like in design and function.

(c) The hospice must furnish to the inpatient provider a copy of the patient's plan of care and specify the inpatient services to be furnished.

(d) The inpatient provider must have established policies consistent with those of the hospice and agree to abide by the patient care protocols established by the hospice for its patients.

(e) The medical record must include a record of all inpatient services and events. A copy of the discharge summary must be provided to the hospice and, if requested, a copy of the medical record is to be provided to the hospice.

(f) The written agreement must designate the party responsible for the implementation of the provisions of the agreement.

(g) The hospice shall retain responsibility for appropriate hospice care training of the personnel who provide the care under the agreement.

(8) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(9) Performance Improvement Program. Each agency must conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of past and present care provided, including inpatient care and contract services. The written performance improvement plan findings are to be used by the hospice to determine the appropriateness and effectiveness of the care provided and to ascertain that professional policies are followed in providing these services. The objectives of those responsible for the performance improvement program are as follows:

(a) To assist the agency in using its personnel and facilities to meet individual and community needs;

(b) To identify and correct problems and/or deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

(c) To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

(d) To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of patient care;

(e) To provide data needed to satisfy state licensure and federal certification requirements; and

(Rule 1200-08-27-.06, continued)

(f) To establish criteria to measure the effectiveness and efficiency of the hospice services provided to patients.

(10) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies.

(c) Continuing education shall be provided for all agency patient care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) The agency shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(e) The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(f) Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(11) Home Health Aide/Hospice Aide Services. Home Health Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The home health aide shall be assigned to a particular patient by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member if other home health services are provided, shall make a supervisory visit to the patient's residence at least monthly, either when the aide is present to observe and assist or when the aide is absent (preferably alternating visits), to assess the aide's competence in providing care and determine whether goals are being met.

(c) There shall be continuing in-service programs on a regularly scheduled basis with on-the-job training during supervisor visits as issues are identified.

(Rule 1200-08-27-.06, continued)

(12) Physical Therapy, Occupational Therapy and Speech Language Pathology Services. Physical therapy services, occupational therapy services, and speech language pathology services must be available and when provided, offered in a manner consistent with accepted standards of practice.

(13) Medical Supplies. Medical supplies and appliances, including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the hospice.

(b) The hospice must have a policy for the disposal of controlled drugs maintained in the patient's home or temporary place of residence when those drugs are no longer needed by the patient.

(c) Drugs and biologicals may be administered by the patient or his/her family member if the patient's attending physician has approved.

(14) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every patient receiving hospice services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; and signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) A home care organization providing hospice services is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of patients under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(d) Even if the agency discontinues operations, records shall be maintained as mandated by this Chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a patient is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient when the agency is directly involved in the transfer.

(Rule 1200-08-27-.06, continued)

(e) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. The patient's written consent shall be required for release of information when the release is not otherwise authorized by law.

(f) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-260 and 68-11-304.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed September 13, 2002; effective November 27, 2002 Amendment filed February 23, 2007; effective May 9, 2007.*

1200-08-27-.07 RESERVED.

1200-08-27-.08 RESERVED.

1200-08-27-.09 RESERVED.

1200-08-27-.10 INFECTIOUS AND HAZARDOUS WASTE.

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(a) Waste human blood and blood products such as serum, plasma, and other blood components;

(b) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass and scalpel blades) used in patient care; and

(c) Other waste determined to be infectious by the agency in its written policy.

(3) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported prior to treatment and disposal.

(a) Contaminated sharps must be directly placed in leakproof, rigid and puncture-resistant containers which must then be tightly sealed.

(b) Infectious and hazardous waste must be secured in fastened plastic bags before placement in a garbage can with other household waste.

(Rule 1200-08-27-.12, continued)

1200-08-27-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each hospice agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with

(Rule 1200-08-27-.13, continued)

those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

(Rule 1200-08-27-.13, continued)

6. any other adult who satisfies the requirements of 1200-08-27-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-27-.13(16)(c) thru 1200-08-27-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision

(Rule 1200-08-27-.13, continued)

or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-27-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-27-.13(20) thru 1200-08-27-.13(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(Rule 1200-08-27-.13, continued)

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-27-.13(20) thru 1200-08-27-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(Rule 1200-08-27-.13, continued)

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport~~

(Rule 1200-08-27-.13, continued)

~~to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act;

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being

(Rule 1200-08-27-.13, continued)

discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(Rule 1200-08-27-.13, continued)

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-27-.14 DISASTER PREPAREDNESS.

(1) All agencies shall establish and maintain communications with the local office of the Tennessee Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The agency shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

(2) A file of documents demonstrating communications and cooperation with the local agency must be maintained.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000.*

1200-08-27-.15 APPENDIX I

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

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

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(Rule 1200-08-27-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	**Physician Signature** (Mandatory) **Date**	**Physician Phone Number**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-27-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-27-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident	☐ Patient's preferences
☐ Health care agent	☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Court-appointed guardian	☐ Medical indications
☐ Health care surrogate	☐ (Other) _____
☐ Parent of minor	
☐ Other: _____ (Specify)	

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-27-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-27-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

Name: _____ Phone #: _____ Relation: _____
Address: _____

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

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

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

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

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-27-.15, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

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

Please sign on page 2

(Rule 1200-08-27-.15, continued)
Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

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

_____
Signature of witness number 1

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

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

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

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-27-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

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

CHAPTER 1200-08-28
STANDARDS FOR HIV SUPPORTIVE LIVING CENTERS

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1200-08-28-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~Administrator. An individual appointed by a governing body who is responsible for the day to day management of the HIV Supportive Living Facility.

(3) ~~(2)~~Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) ~~(5)~~Bereavement Counseling. Counseling services provided to the individual's family and/or significant other both prior to and after the individual's death.

(7) ~~(6)~~Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.

(8) ~~(7)~~Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or

(Rule 1200-08-28-.01, continued)

chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) ~~(10)~~ Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) ~~(11)~~ Clinical Note. A written and dated notation containing a resident assessment, responses to medications, treatments and services and/or any changes in condition signed by a health professional who made contact with the resident, family or significant other.

(13) ~~(12)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(14) ~~(13)~~ Competent. A resident who has capacity.

(15) ~~(14)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(16) ~~(15)~~ Department. The Tennessee Department of Health.

(17) ~~(16)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(18) ~~(17)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners.

~~(18) Do-Not-Resuscitate (DNR) Order. An order entered by the resident's treating physician in the resident's file which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(19) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(20) ~~(19)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(21) ~~(20)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(22) ~~(21)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(23) ~~(22)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(24) ~~(23)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(25) ~~(24)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(Rule 1200-08-28-.01, continued)

(26) ~~(25)~~ Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-28-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(27) ~~(26)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(28) ~~(27)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(29) ~~(28)~~ Home Care Organization. As defined by T.C.A. § 68-11-201 "home care organizations" provides home health services, home medical equipment services or hospice services to residents on an outpatient basis in either their regular or temporary place of residence.

(30) ~~(29)~~ Hospice Services. As defined by T.C.A. §68-11-201, "hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week.

(31) ~~(30)~~ Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(32) ~~(31)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(33) ~~(32)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(34) ~~(33)~~ Involuntary Transfer. The movement of a resident without the consent of the resident, the resident's legal guardian, next of kin or representative, with required notification to the appropriate agencies.

(35) ~~(34)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(36) ~~(35)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(37) ~~(36)~~ Licensed Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(38) ~~(37)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(39) ~~(38)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(40) ~~(39)~~ Medical Director. A licensed physician employed by the HIV supportive living facility to be responsible for medical care in the facility.

(Rule 1200-08-28-.01, continued)

(41) ~~(40)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(42) ~~(41)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

(43) ~~(42)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by a home care organization or by contract with the facility and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and inservice programs, and act as a consultant to other organization personnel.

(44) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(45) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(46) ~~(43)~~ N.F.P.A. The National Fire Protection Association.

(47) ~~(44)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(48) ~~(45)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(49) ~~(46)~~ Palliative. The reduction or abatement of pain or troubling symptoms by appropriate coordination of all elements of the health care team to achieve needed relief of distress.

~~(47) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(50) ~~(48)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(Rule 1200-08-28-.01, continued)

(51) ~~(49)~~ Personal Care Aide. A nursing assistant or a person who can demonstrate through other education or experience that he or she is qualified to provide assistance with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication prompting, exercising and other household services essential to health care.

(52) ~~(50)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(53) ~~(51)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(54) ~~(52)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(55) ~~(53)~~ Physical Therapist Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(56) ~~(54)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(57) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(58) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(59) ~~(55)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(60) ~~(56)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(61) ~~(57)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(62) ~~(58)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(Rule 1200-08-28-.01, continued)

(63) ~~(59)~~ Resident. An individual who has been diagnosed with symptomatic HIV (human immunodeficiency virus) disease, who has a physician who acts as the primary care provider, and who has voluntarily requested admission to, and been accepted by a licensed residential facility.

(64) ~~(60)~~ Resident File. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, and other written electronics, or graphic data prepared, kept, made or maintained in the facility that pertains to confinement or services rendered to residents.

(65) ~~(61)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(66) ~~(62)~~ Respiratory Therapy Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(67) ~~(63)~~ Respite Care. A short-term period of inpatient care provided to a hospice patient only when necessary to relieve the family members or other persons caring for the patient.

(68) ~~(64)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(69) ~~(65)~~ Shall or Must. Compliance is mandatory.

(70) ~~(66)~~ Social Worker. An individual who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has one (1) year of social work experience in a health care setting.

(71) ~~(67)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

(72) ~~(68)~~ Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.

(73) ~~(69)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that organization.

(74) ~~(70)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(75) ~~(71)~~ Student. A person currently enrolled in an accredited course of study that is approved by the appropriate licensing board or equivalent body.

(76) ~~(72)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(77) ~~(73)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if

(Rule 1200-08-28-.01, continued)

the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.

(78) ~~(74)~~ Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(79) ~~(75)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(80) ~~(76)~~ Transfer. The movement of a resident at the direction of a physician or other qualified or certified professionals when a physician is not readily available, but does not include such movement of a resident who leaves the facility against medical advice.

(81) ~~(77)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

~~(78) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(82) (79) Volunteer. An individual who agrees to provide services to a resident, staff, significant other and/or family member(s), without monetary compensation, with appropriate supervision by the facility.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-28-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local government unit, or any division, department, board or agency thereof shall establish, conduct, operate, or maintain in the State of Tennessee any HIV supportive living facility without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure at the time of the original licensing. The name of the HIV supportive living facility shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the HIV supportive living facility.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

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

1.	Less than 25 beds	$ 800.00
2.	25 to 49 beds, inclusive	$ 1,000.00
3.	50 to 74 beds, inclusive	$1,200.00
4.	75 to 99 beds, inclusive	$1,400.00

(Rule 1200-08-28-.12, continued)

(r) To manage personal financial affairs. Any request by the resident for assistance must be in writing. A request for any additional person to have access to a resident's funds must also be in writing;

(s) To be told in writing before or at the time of admission about the services available in the facility, about any extra charges and charges for services not covered;

(t) To be free from discrimination because of the exercise of the right to speak and voice complaints;

(u) To exercise his/her own independent judgment by executing any documents, including admission forms; and

(v) To voice grievances and complaints and to recommend changes in policies and services to the facility staff, or outside representatives of the resident's choice. The facility shall establish a grievance procedure and fully inform the resident and family/significant other of same.

(2) The rights set forth in this section may be abridged, restricted, limited or amended only as follows:

(a) When medically contraindicated;

(b) When necessary to protect and preserve the rights of the residents in the facility; or

(c) When contradicted by the explicit provisions of another rule of the board.

(3) Any reduction in resident's rights must be explicit, reasonable, appropriate to the justification, the least restrictive response feasible, shall be explained to the resident, and must be documented in the individual resident's record by reciting the limitation's reason and scope.

(4) Residents' pets and other animals utilized for pet therapy programs shall be allowed in the facility. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

(5) Each resident has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed June 18, 2002; September 1, 2002. Amendment filed December 15, 2005; effective February 28, 2006.*

1200-08-28-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each HIV supportive living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include

(Rule 1200-08-28-.13, continued)

individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(Rule 1200-08-28-.13, continued)

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:

1. the resident has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.

(d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the resident's spouse, unless legally separated;

2. the resident's adult child;

3. the resident's parent;

4. the resident's adult sibling;

5. any other adult relative of the resident; or

6. any other adult who satisfies the requirements of 1200-08-28-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;

(Rule 1200-08-28-.13, continued)

2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the resident during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-28-.13(16)(c) thru 1200-08-28-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-28-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.

(Rule 1200-08-28-.13, continued)

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.

(19) Except as provided in 1200-08-28-.13(20) thru 1200-08-28-.13(22), a health care provider or institution providing care to a resident shall:

(a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and

(b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(Rule 1200-08-28-.13, continued)

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-28-.13(20) thru 1200-08-28-.13(22) shall:

(a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;

(b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

(Rule 1200-08-28-.13, continued)

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

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

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

(Rule 1200-08-28-.13, continued)

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the

(Rule 1200-08-28-.13, continued)

Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

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

(Rule 1200-08-28-.13, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-28-.14 DISASTER PREPAREDNESS.

(1) Emergency Electrical Power.

(a) If an HIV supportive living facility chooses to have one or more on-site electrical generators, they shall be capable of providing emergency electrical power to at least all life sustaining equipment and life sustaining resources such as: ventilators; blood banks, biological refrigerators, safety switches for boilers, safety lighting for corridors and stairwells and other essential equipment.

(b) Connections shall be through a switch which shall automatically transfer the circuits to the emergency power source in case of power failure. It is recognized that some equipment may not sustain automatic transfer and provisions will have to be made to manually change these items from a non-emergency powered outlet to an emergency powered outlet or other power source. All emergency power transfer switches shall be labeled as such. Switches affecting heat, ventilation, and all systems shall be labeled.

(c) The emergency power system shall have a minimum of twenty four (24) hours of either propane, gasoline or diesel fuel. The quantity shall be based on its expected or known connected load consumption during power interruptions. In addition, the HIV supportive living facility shall have a written contract with an area fuel distributor which guarantees first priority service for re-fills during power interruptions.

(d) The emergency power system (generator) shall be inspected weekly and exercised and under actual load and operating temperature conditions for at least thirty (30) minutes, once each month, and shall include automatic and manual transfer of equipment. The generator shall be exercised by trained facility staff who are familiar with the systems' operation. Instructions for the operation of the systems and the manual transfer of emergency power shall be maintained with the facility's disaster preparedness plan and shall be separately identified in the plan. Records shall be maintained for all weekly inspections and monthly tests and be kept on file for a minimum of three (3) years.

(2) Physical Facility and Community Emergency Plans.

(a) Physical Facility (Internal Situations).

1. Every HIV supportive living facility shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".

2. The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Plans that provide for the relocation of residents to other health care facilities must have written agreements for emergency transfers. The agreements may be mutual, i.e. providing for transfers either way.

(Rule 1200-08-28-.14, continued)

1. All HIV supportive living facilities shall establish and maintain communications with the county Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.

2. Each HIV supportive living facility must rehearse both the Physical Facility and Community Emergency plan as required in these regulations, even if the local Emergency Management Agency is unable to participate.

3. A file of documents demonstrating communications and cooperation with the local agency must be maintained.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed December 15, 2005; effective February 28, 2006.*

1200-08-28-.15 APPENDIX I

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

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

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A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-28-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

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

Using POST

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

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

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

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

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

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

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-28-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:	**The Basis for These Orders Is:** (Must be completed)
☐ Patient/Resident	☐ Patient's preferences
☐ Health care agent	☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Court-appointed guardian	☐ Medical indications
☐ Health care surrogate	☐ (Other) _____
☐ Parent of minor	
☐ Other: _____ (Specify)	

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-28-.15, continued)

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

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

Directions for Health Care Professionals

Completing POST

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

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

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

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

Using POST

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

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

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

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

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

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

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

Reviewing POST

This POST should be reviewed if:

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

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

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-28-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

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

Agent: I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation:_____
Address: _____

Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation: _____
Address: _____

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

When Effective (mark one): ☐ I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself. ☐ I do not give such permission (this form applies only when I no longer have capacity).

Quality of Life: By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "**no**" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

☐ Yes	☐ No	**Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
☐ Yes	☐ No	**Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
☐ Yes	☐ No	**Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
☐ Yes	☐ No	**End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

(Rule 1200-08-28-.15, continued)

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐ Yes	☐ No	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2

(Rule 1200-08-28-.15, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

_____
Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-28-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-29
STANDARDS FOR HOME CARE ORGANIZATIONS
PROVIDING HOME MEDICAL EQUIPMENT

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1200-08-29-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~Administrator. A person who:

(a) Is a licensed physician with at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(3) ~~(2)~~Advance Directive. A written statement such as a living will, a durable power of attorney for health care or a do not resuscitate order relating to the provision of health care when the individual is incapacitated.

(4) ~~(3)~~Agency. A Home Care Organization providing home medical equipment.

(5) ~~(4)~~Assistive Technology Practitioner (ATP). Service providers primarily involved in evaluating the consumer's needs and training in the use of a prescribed wheeled mobility device.

(6) ~~(5)~~Assistive Technology Supplier (ATS). Service providers involved in the sale and service of commercially available wheeled mobility devices.

(7) ~~(6)~~Board. The Tennessee Board for Licensing Health Care Facilities.

(8) ~~(7)~~Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents

(Rule 1200-08-29-.01, continued)

intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) ~~(8)~~Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(10) ~~(9)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(11) ~~(10)~~ Competent. For the purpose of this chapter only, a patient who has decision-making capacity.

(12) ~~(11)~~ Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.

(13) ~~(12)~~ Department. The Tennessee Department of Health.

~~(13) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(14) Do-Not-Resuscitate order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) ~~(14)~~ Evaluation. The determination and documentation of the physiological and functional factors that impact the selection of an appropriate seating and wheeled mobility device.

(16) ~~(15)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(17) ~~(16)~~ Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:

(a) the selection and discharge of health-care providers and institutions;

(b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;

(c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and

(d) transfer to other health care facilities.

(18) ~~(17)~~ Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-08-29-.13 or T.C.A. §33-3-220.

(19) ~~(18)~~ Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice

(Rule 1200-08-29-.01, continued)

services to patients on an outpatient basis in either their regular or temporary place of residence.

(20) ~~(19)~~ Home Medical Equipment.

(a) Medical equipment intended for use by the consumer including, but not limited to the following:

1. A device, instrument, apparatus, machine, or other similar article whose label bears the statement: "Caution: Federal law requires dispensing by or on the order of a physician.";
2. Ambulating assistance equipment;
3. Mobility equipment;
4. Rehabilitation seating;
5. Oxygen care equipment and oxygen delivery systems;
6. Respiratory care equipment and respiratory disease management devices.
7. Rehabilitation environmental control equipment;
8. Ventilators;
9. Apnea monitors;
10. Diagnostic equipment;
11. Feeding pumps;
12. A bed prescribed by a physician to treat or alleviate a medical condition;
13. Transcutaneous electrical nerve stimulator;
14. Sequential compression devices; and
15. Neonatal home phototherapy devices.

(b) Home medical equipment does not include:

1. Medical equipment used or dispensed in the normal course of treating patients by hospitals and nursing facilities as defied in this part, other than medical equipment delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical equipment to an individual's residence;
2. Upper and lower extremity prosthetics and related orthotics;
3. Canes, crutches, walkers, and bathtub grab bars;
4. Medical equipment provided through a physician's office incident to a physician's service;

(Rule 1200-08-29-.01, continued)

5. Equipment provided by a pharmacist which is used to administer drugs or medicine that can be dispensed only by a pharmacist; or

6. Enteral and parenteral equipment provided by a pharmacist.

(21) ~~(20)~~ Home medical equipment provider. Any person who provides home medical equipment services.

(22) ~~(21)~~ Home medical equipment services. A service provided by any person who sells or rents home medical equipment for delivery to the consumer' place of residence in this state, regardless of the location of the home medical equipment provider.

(23) ~~(22)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(24) ~~(23)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(25) ~~(24)~~ Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:

(a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);

(b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and

(c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

(26) ~~(25)~~ Legal Conservator. Any person authorized to act for the patient pursuant to any provision of T.C.A. Title 34, Chapters 5 and 11 through 13.

(27) ~~(26)~~ Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

(28) ~~(27)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(29) ~~(28)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(30) ~~(29)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(31) (30) Medical Record. Information that pertains to confinement or services rendered to patients, including one or more of the following:

(a) medical histories;

(b) records;

(c) reports;

(Rule 1200-08-29-.01, continued)

(d) clinical notes;

(e) summaries; or

(f) orders.

If the patient does not require any clinical services from the home medical equipment company, the medical record will consist of the physician order only.

(32) ~~(31)~~ Medical Futile Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the surrogate expresses the goals of the patient.

(33) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(34) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(35) ~~(32)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

~~(33) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(36) ~~(34)~~ Physician. A person currently licensed as such by the Tennessee Board of Medical Examiners or currently licensed by the Tennessee Board of Osteopathic Examination. For the purpose of this chapter only, a physician who is licensed to practice medicine or osteopathy in a state contiguous to Tennessee, who have previously provided treatment to the patient and has an ongoing physician-patient relationship with the patient for whom a referral is to be made, may refer a patient residing in this state to a home care organization providing hospice services duly licensed under this chapter. This shall not be construed as authorizing an unlicensed physician to practice medicine in violation of T.C.A. §§ 63-6-201 or 63-9-104.

(37) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(38) ~~(35)~~ Qualified Rehabilitation Professional. A health care professional with in the professional's scope of practice licensed under Title 63; or an individual who has

(Rule 1200-08-29-.01, continued)

appropriately obtained the designation of ATS or ATP, meeting all requirements thereof, as established by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

(39) ~~(36)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(40) ~~(37)~~ Shall or Must. Compliance is mandatory.

(41) ~~(38)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(42) ~~(39)~~ Surrogate. The patient's conservator, or if none, a competent adult most likely to know the wishes of the patient with respect to the possible withholding of resuscitative services or withdrawal of resuscitative services.

(43) ~~(40)~~ Wheeled Mobility Device. A wheelchair or wheelchair and seated positioning system prescribed by a physician and required for use by the patient for a period of six (6) months or more. The following Medicare wheelchairs base codes are exempt: K0001, K0002, K0003, K0004, K0006, and K0007 as long as the consumer weighs less than three hundred (300) pounds.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-226, and 68-11-303.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendment filed June 25, 2007; effective September 8, 2007. Amendment filed October 11, 2007; effective December 25, 2007. Amendments filed December 23, 2009; effective March 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-29-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation or any state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any Home Care Organization providing home medical equipment without having a license. A license shall be issued to the person or persons named and only for the premises listed in the application for licensure. The name of the agency shall not be changed without first notifying the Department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the agency.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the Department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

(Rule 1200-08-29-.02, continued)
2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed February 22, 2010; effective May 23, 2010.

1200-08-29-.03 DISCIPLINARY PROCEDURES.

(1) The Board may suspend or revoke a license for:

(a) Violation of federal or state statutes;

(b) Violation of rules as set forth in this chapter;

(c) Permitting, aiding or abetting the commission of any illegal act by the agency;

(d) Conduct or practices found by the Board to be detrimental to the health, safety, or welfare of the patients of the agency; or

(e) Failure to renew the license.

(2) The Board may consider all factors which it deems relevant, including but not limited to the following, when determining sanctions:

(a) The degree of sanctions necessary to ensure immediate and continued compliance;

(b) The character and degree of impact of the violation on the health, safety and welfare of the patient in the agency.

(c) The conduct of the agency in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and

(d) Any prior violations by the agency of statutes, rules or orders of the Board.

(3) When an agency is found by the Department to have committed a violation of this chapter, the Department will issue to the agency a statement of deficiencies. Within ten (10) days of receipt of the statement of deficiencies the agency must return a plan of correction indicating the following:

(a) How the deficiency will be corrected; and

(b) The date upon which each deficiency will be corrected;

(4) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed March 1, 2007; effective May 15, 2007.*

1200-08-29-.04 ADMINISTRATION.

~~(1) Governing Body. The licensee shall assume full legal authority and responsibility for the operation of the agency. The governing body shall appoint a qualified manager, arrange for~~

(Rule 1200-08-29-.04, continued)

~~professional advice, adopt and periodically review written bylaws or an acceptable equivalent, and oversee the management and fiscal affairs of the agency. The name and address of each officer, director, and owner shall be disclosed. If the agency is a corporation, all ownership interests of five (5) percent or more (direct or indirect) shall also be disclosed.~~

(1) Governing Body. The licensee shall assume full legal authority and responsibility for the operation of the agency. The governing body shall appoint a qualified administrator, arrange for professional advice, adopt and periodically review written bylaws or an acceptable equivalent, and oversee the management and fiscal affairs of the agency. The name and address of each officer, director, and owner shall be disclosed. If the agency is a corporation, all ownership interests of five (5) percent or more (direct or indirect) shall also be disclosed.

~~(2) Manager. The manager shall organize and direct the agency's ongoing functions; maintain ongoing communication between and among the governing body, the professional personnel and the staff; employ qualified personnel, ensure adequate staff education and evaluation for all personnel involved in direct care of the patient; ensure the accuracy of public information materials and activities; and implement an effective accounting system. A person with sufficient experience and training shall be authorized in writing to assume temporary duty during the manager's short-term absence. Any change of managers shall be reported to the Department within fifteen (15) days.~~

(2) Administrator. The administrator shall organize and direct the agency's ongoing functions; maintain ongoing communication between and among the governing body, the professional personnel and the staff; employ qualified personnel, ensure adequate staff education and evaluation for all personnel involved in direct care of the patient; ensure the accuracy of public information materials and activities; and implement an effective accounting system. A person with sufficient experience and training shall be authorized in writing to assume temporary duty during the administrator's short-term absence. Any change of administrators shall be reported to the Department within fifteen (15) days.

~~(3) Organization Structure. The agency's structure is such that responsibility and accountability for the program are clearly defined. An organizational chart (A) shows the relationship of the manager to the governing body; (B) clearly identifies lines of supervision; and (C) accurately defines the chain of command for in-home personnel.~~

(3) An administrator shall serve no more than one (1) licensed home care organization unless that home care organization provides other categories of home care organization services under the same ownership and at the same location.

(4) Organization Structure. The agency's structure is such that responsibility and accountability for the program are clearly defined. An organizational chart (A) shows the relationship of the administrator to the governing body; (B) clearly identifies lines of supervision; and (C) accurately defines the chain of command for in-home personnel.

(5)~~(4)~~ Accreditation. Any home medical equipment provider accredited by the Joint Commission on Accreditation of Health Care Organizations, Community Health Accreditation Program or other approved accrediting bodies may submit documents evidencing current accreditation and shall be presumed to comply with the requirements of the Board. Licensing of a home medical equipment provider which has been accredited by the Joint Commission on Accreditation of Health Care Organizations, Community Health Accreditation Program or other approved accrediting bodies shall become effective upon written notification from the

(Rule 1200-08-29-.04, continued)

Board's staff that the accreditation meets the standards set out in the rules and regulations promulgated pursuant to T.C.A. §§ 68-11-201, et seq.

(6)~~(5)~~ Personnel. Employees shall be qualified for the positions they hold and meet the education, training, and experience requirements defined by the agency.

(a) All employees shall receive and participate in an orientation program prior to assuming patient care responsibilities. The agency's written orientation plan shall outline topics to be covered; attendance requirements; method to verify topics discussed; a description of the orientation process; and the orientation plan shall include, but is not limited to:

1. Review of the individual's job description and duties to be performed;
2. Organizational chart;
3. Supervision;
4. Recordkeeping and reporting;
5. Confidentiality;
6. Patient's rights and responsibilities;
7. Pertinent personnel policies; and
8. Skills validation, as applicable.

(b) The agency shall maintain a personnel file for each employee which contains the following information:

1. A completed application;
2. References;
3. Work experience;
4. Educational preparation;
5. Job description which lists the minimum education, training, and experience requirement; job responsibilities; and title of immediate supervisor;
6. Annual performance appraisal or individual evaluations on specific job descriptions which include demonstrated current competency and proof that performance appraisal results were shared with employee;
7. Prior training;
8. Proof of orientation; and
9. Evidence of current license, if applicable.

(c) Medical equipment delivery technicians who deliver and install respiratory equipment shall be determined to be competent by their employer prior to independently delivering and setting up the respiratory equipment in a patient's home. The home medical

(Rule 1200-08-29-.04, continued)

equipment supplier must maintain documentation to demonstrate that competency requirements are met. Standard competencies will include at a minimum the following:

1. Role responsibilities;
2. Cylinders;
3. Pressure regulators/Flow controllers;
4. Home liquid oxygen systems;
5. Oxygen concentrators;
6. Oxygen analyzers;
7. Humidifiers;
8. Low flow nasal cannula; and
9. Small volume medication nebulizers with air compressors.

(d) Medical equipment delivery technicians shall be determined by their employer to be competent in their understanding of which acts they may and may not perform.

(e) The Board may in its discretion, after consultation with the Tennessee Association for Home Care and the Tennessee Society for Respiratory Care, encourage the use of certain competency documents developed by these two organizations to ensure compliance with the provisions of (c) and (d).

(7)~~(6)~~ All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(8)~~(7)~~ "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(9)~~(8)~~ The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(Rule 1200-08-29-.04, continued)
Authority: *T.C.A. §§4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-1-222, 68-11-226, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed June 25, 2007; effective September 8, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010.*

1200-08-29-.05 ADMISSIONS, DISCHARGE AND TRANSFERS.

(1) The agency only admits patients whose needs can be met by the services the agency provides.

(a) There shall be written policies and procedures and an organizational process that indicates employees with the necessary skill and training are assigned to assess the level and type of care/service required by patients referred to the agency, and to determine whether the patient is eligible for admission based on the agency's criteria and availability of services to meet the patient's needs. There shall also be a reasonable time frame in which the patient's eligibility for admission is assessed which takes into account the patient's service needs.

(b) There shall be a written policy that addresses the agency's compliance with federal, state, and local anti-discrimination laws in the selection of patients.

(2) Patients shall be transferred or referred to other organizations/agencies in the community when service needs are identified by staff or patients which cannot be met by the agency.

(3) The agency shall ensure that no person, on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of patients under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed June 25, 2007; effective September 8, 2007.*

1200-08-29-.06 BASIC AGENCY FUNCTIONS.

(1) Patient Instruction. The agency shall have written guidelines relating to patient and/or caregiver training and education that includes at a minimum:

(a) Financial responsibilities;

(b) Equipment use and maintenance;

(c) Patient rights and responsibilities;

(d) Emergency/back-up systems and trouble shooting procedures, if applicable; and

(e) How to contact the agency during regular business hours and after hours, if applicable.

(2) Infection Control. The agency shall have written policies and procedures relating to infection control. Employees shall consistently follow infection control procedures in the provision of care to the agency's patients. The written policies and procedures at a minimum must address standards and education of staff about:

RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-8-30
STANDARDS FOR PEDIATRIC EMERGENCY CARE FACILITIES

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1200-8-30-.05 Basic Functions

1200-8-30-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ ACLS. Advance Cardiac Life Support.

(3) ~~(2)~~ APLS. Advanced Pediatric Life Support.

(4) ~~(3)~~ Basic Pediatric Emergency Facility. The facility shall be capable of identifying those pediatric patients who are critically ill or injured, stabilizing pediatric patients, including the management of airway, breathing and circulation, and providing an appropriate transfer to a definitive care facility.

(5) ~~(4)~~ Board. Board for Licensing Health Care Facilities.

(6) ~~(5)~~ Comprehensive Regional Pediatric Center (CRPC). The facility 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.

(7) ~~(6)~~ CPR. Cardiopulmonary Resuscitation.

(8) Do-Not-Resuscitate order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(9) ~~(7)~~ E. Essential.

(10) ~~(8)~~ ECG. Electrocardiogram.

(11) ~~(9)~~ ED. Emergency Department.

(12) ~~(10)~~ EED. Essential in emergency department.

(13) ~~(11)~~ EED&EPI. Essential in emergency department and pediatric intensive care unit.

(14) ~~(12)~~ EH. Essential in hospital.

(15) ~~(13)~~ EMS. Emergency medical service.

(16) ~~(14)~~ EMSC. Emergency medical service for children.

(Rule 1200-8-30-.01, continued)

(17) ~~(15)~~ ENPC. Emergency Nursing Pediatric Course.

(18) ~~(16)~~ EP. Promptly available.

(19) ~~(17)~~ EPI. Essential in pediatric intensive care unit only.

(20) ~~(18)~~ ES. Essential if service not provided at hospital.

(21) ~~(19)~~ General Pediatric Emergency Facility. The facility shall have a defined separate pediatric inpatient service and a department of pediatrics within the medical staff structure. The facility may accept appropriate referrals of pediatric patients from Basic and Primary Pediatric Emergency Facilities as part of prearranged triage, transfer and transport agreements.

(22) ~~(20)~~ ICP. Intracranial Pressure.

(23) ~~(21)~~ IM. Intramuscular.

(24) ~~(22)~~ IV. Intravenous.

(25) Misappropriation of patient/resident property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(26) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(27) ~~(23)~~ OR. Operating Room.

(28) ~~(24)~~ PA. Physician's Assistant.

(29) ~~(25)~~ PALS. Pediatric Advanced Life Support.

(30) ~~(26)~~ Pediatric Emergency Care Facilities. Hospital facilities that provide emergency services and are classified according to their abilities to provide such services. The classifications are: 1) Basic Pediatric Emergency Facility, 2) Primary Pediatric Emergency Facility, 3) General Pediatric Emergency Facility, and 4) Comprehensive Regional Pediatric Center.

(31) Physician. A person currently licensed as such by the Tennessee Board of Medical Examiners or currently licensed by the Tennessee Board of Osteopathic Examination.

(32) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(33) ~~(27)~~ PICU/PI. Pediatric Intensive Care Unit.

(34) ~~(28)~~ Primary Pediatric Emergency Facility. The facility shall provide the same services as a Basic Pediatric Emergency Facility and shall have limited capabilities for the management of

(Rule 1200-8-30-.01, continued)

minor pediatric inpatient problems and may accept appropriate transfers of pediatric patients when there is no facility with more comprehensive capabilities available within a region.

(35) ~~(29)~~ QA. Quality Assurance.

(36) ~~(30)~~ QI. Quality Intervention.

(37) ~~(31)~~ RN. Registered Nurse.

(38) ~~(32)~~ RRT. Registered Respiratory Therapist.

(39) ~~(33)~~ SE. Strongly encouraged if such services are not available within a reasonable distance.

(40) ~~(34)~~ Trauma. A physical injury or wound caused by external force or violence.

(41) ~~(35)~~ Trauma Registry. A central registry compiled of injury incidence information supplied by designated trauma centers and Comprehensive Regional Pediatric Centers (CRPC's) for the purposes of allowing the Board to analyze data and conduct special studies regarding the causes and consequences of traumatic injury.

(42) ~~(36)~~ TRACS. Trauma Registry of American College of Surgeons.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-11-251.* ***Administrative History:*** *Original rule filed November 30, 1999; effective February 6, 2000. Amendment filed October 15, 2002; effective December 29, 2002. Amendment filed August 16, 2006; effective October 30, 2006. Amendment filed December 4, 2007; effective February 17, 2008.*

(Rule 1200-8-30-Table 1, continued)

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-11-251.* ***Administrative History:*** *Original rule filed November 30, 1999; effective February 6, 2000. Amendment filed October 15, 2002; effective December 29, 2002. Amendment filed December 4, 2007; effective February 17, 2008.*

Table 1 (Parts 1-7) provides a summary for emergency care facilities for each level of pediatric health care. Personnel, equipment, and issues that are essential at each designation or level are described as either being essential in the emergency department (EED), essential in the pediatric intensive care unit (EPI), essential within the hospital (EH), or promptly available (EP). An optional but strongly encouraged category (SE) is used to describe personnel, activities or issues that may be essential to network a comprehensive regionalized EMS-EMSC system in rural areas. Although these are not generally required of a specific hospital, they are strongly encouraged if such services are not available within a reasonable distance.*

*Some services are usually available at a Comprehensive Regional Pediatric Center but, if not provided, then transfer agreements must be in place (ES). Other capabilities must be available in the pediatric intensive care units but should be promptly available to the emergency department and hospital (EPI and EP).

[1] All medical specialists should have pediatric expertise as evidenced by board certification, fellowship training, or demonstrated commitment and continuing medical education in their subspecialty area.

[2] Or substituted by a current signed transfer agreement with an institution with cardiothoracic surgery and cardiopulmonary bypass capability.

[3] Forensic pathologist must be available either as part of the hospital staff or on a consulting basis.

[4] Resuscitative medications may be exempted if the hospital can demonstrate PALS recommendation changes, manufacturer recalls or shortages, or Food and Drug Administration requirement issues.

TABLE 1. PEDIATRIC EMERGENCY CARE FACILITIES				
Part 1/7	FACILITY DESIGNATION/LEVEL			
1. PERSONNEL	CRPC	General	Primary	Basic
Physician with pediatric emergency care experience	EED	EED	EED	EP
RN with pediatric training	EED & EPI	EED	EED	EED
Respiratory therapist	EH	EH	EH	
Trauma coordinator	E			
Nurse educator	E	E		
Trauma team *	E	SE	SE	
Specialist consultants * (Available in less than 1 hour) [1]				
Pediatrician	EP	EP	EP	SE
Radiologist	EP	EP	EP	SE
Anesthesiologist *	EP	EP	EP	SE
Cardiologist	EP			
Critical Care Physician	EP			
Nephrologist	EP			
Hematologist/oncologist	EP			
Endocrinologist	EP			
Gastroenterologist	EP			
Neurologist	EP			
Pulmonologist	EP			
Psychiatrist/Psychologist	EP			
Infectious Disease Physician	EP			
Surgical specialists* (Available in less than 1 hour)				

(Rule 1200-8-30-Table 1, continued)

General surgeon		EP	EP	SE
Pediatric surgeon *	EP	SE		
Neurosurgeon	EP	SE		
Orthopedic surgeon	EP	SE	SE	
Otolaryngologist	EP			
Urologist	EP			
Plastic surgeon	EP			
Oral/maxillofacial surgeon	EP			
Gynecologist	EP			
Microvascular surgeon	EP			
Hand surgeon	EP			
Ophthalmologist	EP			
Cardiac surgeon	EP			
Pathologist	EP			
Pediondontist	EP			
Physical Medicine/Rehabilitation physician	E			
Trauma Rehabilitation Program				
Physical Therapy	E			
Occupational Therapy	E			
Speech Therapy	SE			
Special Education	E			

TABLE 1. PEDIATRIC EMERGENCY CARE FACILITIES

Part 2/7	FACILITY DESIGNATION/LEVEL			
2. EQUIPMENT	CRPC	General	Primary	Basic
EMS communication equipment*	E	E	E	E
Organized emergency cart*	EED&EPI	EED	EED	EED
Printed drug doses/tape	EED&EPI	EED	EED	EED
Monitoring devices				
ECG monitor/defibrillator with pediatric paddles or pads 0-400 joules and hard copy capabilities	EED&EPI	EED	EH	EH
Pulse oximeter (adult/pediatric probes)	EED&EPI	EED	EH	EH
Blood pressure cuffs (infant, child, adult, thigh)	EED&EPI	EED	EED	EED
Rectal thermometer probe (28 deg. – 42 deg. C)	EED&EPI	EED	EH	EH
Otoscope, ophthalmoscope, stethoscope	EED&EPI	EED	EED	EED
Cardiopulmonary monitor with pediatric and hard copy capability, visible/audible alarms, routine testing and maintenance	EED&EPI	EED	EED	EH
Doppler and noninvasive blood pressure monitoring (infant, child, adult)	EED&EPI	EED	EH	
End tidal CO2 detector	EED	EED	EED	EED
End tidal CO2 monitor	EED&EPI	EH	SE	
Monitor for central venous pressure, arterial lines, temperature	EH&EPI	EH	SE	
Monitor for pulmonary arterial pressure and intracranial pressure	EPI			
Transportable monitor	EED&EPI	EED	EH	EH
Airway control/ventilation equipment				
Bag-valve-mask device: pediatric (450 mL), and adult (1000 mL) with oxygen reservoir and without pop-off valve. Infant, child, and adult masks	EED&EPI	EED	EED	EED
Oxygen delivery device with flow meter	EED&EPI	EED	EED	EED
Clear oxygen masks, standard and non-rebreathing (neonatal to adult size)	EED&EPI	EED	EED	EED
Nasal cannula (infant, child, adult)	EED&EPI	EED	EED	EED
PEEP valve	EED&EPI	EED		
Suction devices-catheters 6-14 fr, yankauer-tip/suction equipment	EED&EPI	EED	EED	EED

(Rule 1200-8-30-Table 1, continued)

Nasal airways (infant, child, adult)	EED&EPI	EED	EED	EED
Nasogastric tubes (sizes 6-16 fr)	EED&EPI	EED	EED	EED
Laryngoscope handle and blades:				
- curved 2,3	EED&EPI	EED	EED	EED
- straight or Miller 0,1,1-1/2, 2,3	EED&EPI	EED	EED	EED
Endotracheal tubes:				
- uncuffed (2.5-5.5)	EED&EPI	EED	EED	EED
- cuffed (6.0-9.0) [all pediatric sizes EPI]	EED&EPI	EED	EED	EED
Stylets for endotracheal tubes (pediatric, adult)	EED&EPI	EED	EED	EED
Lubricant, water soluble	EED	EED	EED	EED
Magill forceps (pediatric, adult)	EED	EED	EED	EED
Spirometers, chest physiotherapy and suctioning equipment	EPI			
Continuous oxygen analyzers with alarms	EPI			
Inhalation therapy equipment	EPI			
Tracheostomy tubes (~~shiley~~ sizes 0-6)	EED	EH	EH	
Oxygen blender	EED&EPI	EED	EED	EED
Pediatric endoscopes and bronchoscopes available	EH	EH		
Respired gas humidifiers and bronchoscopes available	EPI			
Pediatric ventilators	EPI	EH		
Difficult airway kit	EED&EPI	EED	SE	SE
Vascular access supplies				
Arm boards (infant, child, and adult sizes)	EED&EPI	EED	EED	EED
Butterflies (19-25 gauge)	EED&EPI	EED	EED	EED
Catheters for intravenous lines (16-24 gauge)	EED&EPI	EED	EED	EED
Needles (18-27 gauge)	EED&EPI	EED	EED	EED
Intraosseous needles	EED&EPI	EED	EED	EED
Umbilical vessel catheters (3,5 fr) and cannulation tray	EED	EED	EH	EH
IV administration sets and extension tubing with calibrated chambers	EED&EPI	EED	EED	EED
Extension tubing, stopcocks, T-connectors	EED&EPI	EED	EED	EED
Infusion device able to regulate rate and volume of infusate	EED&EPI	EED	EED	EED
Isotonic balanced salt solution and D[5[0.5 normal saline	EED	EED	EED	EED
Central venous access utilizing Seldinger technique (4-7 fr)	EED&EPI	EED	EED	
IV fluid/blood warmer	EED&EPI	EED	EH	
Blood gas kit	EED	EED	EH	
Rapid infusion pumps	EED&EPI	EH		

TABLE 1. PEDIATRIC EMERGENCYCARE FACILITIES				
Part 3/7	FACILITY DESIGNATION/LEVEL			
2. EQUIPMENT AND SUPPLIES (Cont.)	CRPC	General	Primary	Basic
Specialized pediatric trays				
Lumbar puncture	EED&EPI	EED	EED	EH
Urinary catheterization: Foley 6-14 fr	EED&EPI	EED	EED	EED
Venous cutdown	EED&EPI	EED	EH	EH
Thoracostomy tray with chest tube sizes 10-28 fr	EED&EPI	EED	SE	
Peritoneal lavage tray	EED&EPI	EED	SE	
Needle cricothyrotomy set	EED&EPI	EED	EED	
Intracranial pressure monitor tray	EED&EPI	SE		
Obstetrical Kit	EED	EED	EED	EED
Oral Airway (1 in 0-5)	EED&EPI	EED	EED	EED
Tracheostomy tray	EED&EPI	EED	SE	
Fracture management devices				
Cervical immobilization equipment suitable for ped. patients	EED	EED	EED	EED
Spine board (child/adult)	EED	EED	EED	EED
Extremity splints	EED	EED	EED	EED
Femur splint; child, adult	EED	EED	EED	EED

(Rule 1200-8-30-Table 1, continued)

Activated charcoal	EED	EED	EED	EH
Beta-agonist for inhalation	EED&EPI	EED	EED	EH
Bretylium	EED&EPI	EED	EH	EH
Calcium chloride	EED&EPI	EED	EH	EH
Corticosteroids (dexamethasone, methylprednisolone)	EED	EED	EED	EH
Cyanide kit and pediatric doses	EED			
Dextrose-25% and 50%	EED&EPI	EED	EED	EH
Digitalis antibody	EH	EH	EH	
Diphenhydramine	EED	EED	EED	EH
Epinephrine (1:1000, 1:10,000)	EED&EPI	EED	EED	EH
Factor VIII, IX concentrates, DDAVP	EH	EH	EH	
Flumazenil	EH	EH	EH	EH
Furosemide	EED&EPI	EED	EED	EH
Glucagon	EED	EED	EED	
Insulin	EH	EH	EH	
Ipecac	EED	EED	EED	EH
Kayexalate	EH	EH	EH	
Ketamine	EED	EH	ED	
Magnesium sulfate	EED&EPI	EED	EH	
Mannitol-20%	EED&EPI	EH	EH	
Methylene blue	EH	EH	EH	EH
N-acetyl cysteine	EH	EH	EH	
Naloxone	EED	EED	EED	EH
Potassium chloride	EED	EED	EED	
Prostaglandin	EH	EH	EH	
Sodium bicarbonate 4.2%, 7.5% and 8.4%	EED&EPI	EED	EED	EH
Succinylcholine	EED	EED	EH	
Whole bowel irrigation solution	EH	EH	EH	

TABLE 1. PEDIATRIC EMERGENCY CARE FACILITIES				
Part 4/7	FACILITY DESIGNATION/LEVEL			
2. EQUIPMENT AND SUPPLIES (Cont.)	CRPC	General	Primary	Basic
MEDICATION CLASSES				
Analgesics	EED	EED	EH	EH
Antibiotics	EED	EED	EED	EH
Anticonvulsants	EED&EPI	EED	EED	EH
Antihypertensive agents	EED	EED	EH	EH
Antipyretics	EED	EED	EED	EH
PALS and ACLS medications	EED&EPI	EED	EED	EH
Chelating agents for heavy metal poisonings	EH			
Nondepolarizing neuromuscular blocking agents	EED	EED	EED	
Rapid sequence intubation medications	EED&EPI	EED	EH	
Sedatives and antianxiety medications	EED&EPI	EED	EH	EH
MISCELLANEOUS				
Resuscitation board	EED&EPI	EED	EED	EED
Infant scale	EED&EPI	EED	EED	EED
Heating source (for infant warming)	EED&EPI	EED	EED	EED
Precalculated drug sheets or length-base tape	EED	EED	EED	EED
Pediatric restraint equipment (to use for painful or difficult procedures)	EED	EED	EED	
Portable radiography	EED&EPI	EH	EH	
Slit lamp	EH	EH	EH	
Infant incubators	EH			

(Rule 1200-8-30-Table 1, continued)

Bilirubin lights	EH			
Pacemaker capability	EH	EH		
Thermal control for patient and/or resuscitation room	EED	EED	EED	
3. FACILITIES				
Emergency Department				
Two or more areas with capacity and equipment to resuscitate medical/surgical/trauma pediatric patients	E			
One or more areas as above		E		
Separate Pediatric designated site	E			
Access to helicopter landing site	E	E	E	E
Hospital support services				
Pediatric inpatient care	E	E		
Pediatric intensive care unit	E			
Child abuse team	E	E		
Child life support	EH			
Operating Room				
Operating room staff	EP	EP	SE	
One RN physically present in OR	E	EP		
Second operating room available and staffed within 30 minutes	E			
Thermal control equipment	E	E		
X-ray capability, including C-arm	E	E		
Endoscopes, all varieties	E			
Craniotomy equipment, including ICP monitoring equipment	E			
Invasive and noninvasive monitoring equipment	E	E		
Pediatric anesthesia and ventilation equipment	E	E		
Pediatric airway control equipment	E	E		
Defibrillator, monitor, including internal and external paddles	E	E		
Laparotomy tray	E	E		
Thoracotomy tray and chest retractors of appropriate size	E			
Synthetic grafts of all sizes	E			
Spinal and neck immobilization equipment	E			
Fracture table with pediatric capability	E			
Auto-transfusion with pediatric capability	E			
Pediatric drug dosage chart	E	E		

TABLE 1. PEDIATRIC EMERGENCY CARE FACILITIES

Part 5/7	FACILITY DESIGNATION/ LEVEL			
3. FACILITIES (Cont.)	CRPC	General	Primary	Basic
OPERATING ROOM (CONT.)				
Tracheostomy tubes, neonatal through adolescent	E	E		
Anesthesia and surgical suite promptly available	EP	EP	SE	
PEDIATRIC INTENSIVE CARE UNIT				
Distinct, controlled access unit	E			
Proximity to elevators	E			
MD on-call room	E			
Waiting room and separate family counseling room	E			
Patients' personal effects storage and privacy provision	E			
Patient isolation capacity and isolation cart	E			
Medication station with drug refrigerator and locked cabinet	E			
Emergency equipment storage	E			
Separate clean and soiled utility rooms	E			
Nourishment station	E			
Separate staff and patient toilets	E			
Clocks, radios, and televisions	E			

(Rule 1200-8-30-Table 1, continued)

Two oxygen, two vacuum, and > 2 compressed air outlets/bed	E			
Computerized lab reporting	E			
Easy, rapid access to head of beds and cribs	E			
Pressure monitoring capability, with 4 simultaneous pressures	E			
Electric patient isolation capability	E			
Recovery Room				
RNs and other essential personnel on call 24 hrs/ day	E	E	E*	
Staff competent in the post-anesthesia care of the pediatric pt.	E	E	E*	
Airway equipment	E	E	E*	
Pressure monitoring capability	E	E	E*	
Thermal control equipment	E	E	E*	
Radiant warmer	E	E	E*	
Blood warmer	E	E	E*	
Resuscitation cart	E	E	E*	
Immediate access to sterile surgical supplies for emergency	E		E*	
Pediatric drug dosage chart	E	E	E	
E* If surgery performed on pediatric patients				
Laboratory services				
Hematology	E	E	E	E
Chemistry	E	E	E	E
Microbiology	E	E	E	SE
Microcapabilities	E	E		
Blood bank	E	E	SE	
Drug levels/toxicology	E	SE	SE	
Refractometer	EPI			
Blood gases	E	E	E	
Radiology Service				
Routine services 24 hours per day	EH	EH	E	E
Computed tomography scan 24 hours per day	E	E	SE	
Ultrasound 24 hours per day	E	E	SE	
Magnetic Resonance Imaging Availability	E	E		
Nuclear medicine	E	SE		
Fluoroscopy/contrast studies 24 hours per day	E	E	SE	
Angiography 24 hours per day	E	E	SE	

TABLE 1. PEDIATRIC EMERGENCY CARE FACILITIES				
Part 6/7	FACILITY DESIGNATION/LEVEL			
3. FACILITIES (Cont.)	CRPC	General	Primary	Basic
OTHER				
Pediatric Echocardiography	E			
Pediatric Cardiac Catheterization	E			
Electroencephalography	E			
Access to:				
Regional poison control center	E	E	E	E
Hemodialysis capability/transfer agreement	E	E	E	
Rehabilitation medicine/transfer agreement	E	E	SE	
Acute spinal cord injury management capability/transfer agreement	E	E	SE	
Hyperbaric oxygen chamber availability/transfer agreement when appropriate	E			
4. Access, Triage, Transfer, and Transport				
Support of medical control*	E	E	SE	SE
Accept call-ahead ambulance information	E	E	E	E

(Rule 1200-8-30-Table 1, continued)

Transfer agreements for: In-patient pediatric care			E	E
ICU pediatric care		E	E	E
Major trauma care	ES	E	E	E
Burn care	ES	E	E	E
Hemodialysis	ES	E	E	E
Spinal injury care	ES	E	E	E
Rehabilitation care	ES	E	E	E
Accept all critically ill patients from lower-level hospitals within a region	E	SE		
Access to transport services appropriate for pediatrics	E	E	E	E
Provide 24-hour consultation to lower-level facilities	E			
Consultation agreements with CRPC		E	E	E
5. Education, Training, Research, and Quality Assessment and Improvement*				
Education and Training				
Public education, injury prevention	E	E	SE	SE
Assure staff training in resuscitation and stabilization	E	E	E	E
Assist with pre-hospital education	E	SE	SE	SE
CPR certification for PICU nurses and respiratory therapists	E			
CPR certification for ED nurses and RRTs	E	E	E	E
Resuscitation practice sessions	E	SE	SE	SE
Ongoing CME for RNs and RRTs from the PICU	E			
Ongoing CME for RNs and RRTs from the ED	E	E	E	E
Network educational resources for training all levels of health professionals	E	SE		
RESEARCH				
Support state EMSC and CRPC research efforts and data collection	E	E	E	E
Participate in and/or maintain trauma registry	E	E	SE	SE
Participate in regional pediatric critical care education	E			

TABLE 1. PEDIATRIC EMERGENCYCARE FACILITIES

Part 7/7	FACILITY DESIGNATION/LEVEL			
5. Education, Training, Research, and Quality Assessment and Improvement* (Cont.)	CRPC	General	Primary	Basic
QUALITY ASSESSMENT AND IMPROVEMENT				
Structured QA/QI program with indicators and periodic review	E	E	E	E
Participate in regional quality review by CRPC and/or local EMS authority	E	E	E	E
6. ADMINISTRATIVE SUPPORT AND HOSPITAL COMMITMENT				
Make available clinical resources for training pre-hospital personnel	E	SE	SE	
Assure properly trained ED staff	E	E	E	E
Assure availability of all necessary equipment/supplies/protocols/agreements/policies	E	E	E	E
Provide emergency care and stabilization for all pediatric patients	E	E	E	E
Support networking education/training for health care professionals	E	E	E	E
Assure appropriate medical control and input to ED management and pediatric care	E	SE	SE	SE
Participate in network pediatric emergency care	E	E	E	E
Assure conformity with building and federal codes for PICU	E			
Assure transport services and agreements are available	E	E	E	E
Assure resources available for data collection	E	E	E	E

(Rule 1200-8-30-Table 1, continued)

Assure availability of: Social services	E	E	E	
Child abuse support services	EP	EP	EP	
Child life support	E			
On-line pre-hospital control	E	SE	SE	SE
Respiratory care	EED	EH	EH	SE
Pediatric Critical Care Committee	E			
Pediatric Trauma Committee	E			
Child development services	E			

RULES
OF
DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-32
STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS

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1200-08-32-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Adult. An individual who has capacity and is at least 18 years of age.

(3) ~~(2)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(4) ~~(3)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(5) ~~(4)~~ Anticoagulant. A medication or medical technique to prevent or slow down coagulation and clotting.

(6) ~~(5)~~ Anticoagulation. The process of inhibiting the blood clotting mechanism by the administration of certain drugs.

(7) ~~(6)~~ Artificial Kidney. An apparatus which removes metabolic wastes or other poisons from the body when the natural kidneys are not functioning properly. This apparatus may be referred to as a kidney dialyzer.

(8) ~~(7)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(9) ~~(8)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs

(Rule 1200-08-32-.01, continued)

and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) ~~(10)~~ Chronic Hemodialysis. Hemodialysis over a long period of time, usually to the extent of the patient's life or organ transplant.

(12) ~~(11)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(13) ~~(12)~~ Competent. A patient who has capacity.

(14) ~~(13)~~ Department. The Tennessee Department of Health.

(15) ~~(14)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(16) ~~(15)~~ Dialysis. A process by which substances are removed from a patient's body by diffusion and convection from one fluid compartment to another across a semipermeable membrane. The two types of dialysis that are currently in common use are hemodialysis and peritoneal dialysis.

(17) ~~(16)~~ Dialysis technician. An individual who is not a registered nurse or physician and who provides dialysis care under the direct supervision of a registered nurse or physician. If unlicensed, this individual may also be known as a patient care technician, dialysis assistant or dialysis technician.

(18) ~~(17)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners or exempted from licensure by T.C.A. §63-25-104 and having at least one (1) year of experience in clinical nutrition.

~~(18) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(19) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(20) ~~(19)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(21) ~~(20)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(22) ~~(21)~~ End-Stage Renal Disease (ESRD). That stage of renal impairment that is or appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(23) ~~(22)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(Rule 1200-08-32-.01, continued)

(24) ~~(23)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(25) ~~(24)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(26) ~~(25)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(27) ~~(26)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-32-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(28) ~~(27)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(29) ~~(28)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(30) ~~(29)~~ Home dialysis. Dialysis performed by a trained patient on him or herself or by a trained designated caregiver on the patient at the patient's home with little or no professional assistance.

(31) ~~(30)~~ Home dialysis training. A training program that teaches dialysis patients and patient caregivers to perform home dialysis.

(32) ~~(31)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(33) ~~(32)~~ Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such person, and maternity care involving labor and delivery for any period of time.

(34) ~~(33)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(35) ~~(34)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(36) ~~(35)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(37) ~~(36)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(Rule 1200-08-32-.01, continued)

(38) ~~(37)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(39) ~~(38)~~ Life Threatening or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(40) ~~(39)~~ Medical Director. A physician who: (1) Is board eligible or board certified in nephrology, internal medicine or pediatrics by a professional board, and has at least 12 months of experience or training in the care of patients at ESRD facilities; or (2) During the 5-year period prior to September 1, 1976, served for at least 12 months as director of a dialysis or transplantation program; and worked within the field of kidney dialysis for at least 12 months in the past 5 years. However, in the areas where a physician who meets the definition in paragraph (1) or (2) of this definition is not available to direct a dialysis facility, another physician may direct the facility, subject to the approval of the Department.

(41) ~~(40)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(42) ~~(41)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients.

(43) ~~(42)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(44) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(45) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(46) ~~(43)~~ NFPA. The National Fire Protection Association.

(47) ~~(44)~~ Nurse Manager. A Registered Nurse who is employed full time in a renal dialysis clinic, is currently licensed as such by the Tennessee Board of Nursing, and (1) has at least 12 months of experience in clinical nursing, and an additional 6 months of experience in nursing care of the patient with permanent kidney failure or undergoing kidney transplantation, including training in and experience with the dialysis process; or (2) Has at least 18 months of experience in nursing care of the patient on maintenance dialysis, or in nursing care of the patient with a kidney transplant, including training in and experience with the dialysis process. If the Nurse Manager is in charge of self-care dialysis training, at least 3 months of the total required ESRD experience must be in training patients in self-care.

(48) ~~(45)~~ Nurse Practitioner/Clinical Nurse Specialist. A person currently licensed as a registered nurse by the Tennessee Board of Nursing and certified by the American Academy of Nurse

(Rule 1200-08-32-.01, continued)

Practitioners, the American Nurses Credentialing Center as a nurse practitioner or holds a certification as clinical nurse specialist from the Tennessee Board of Nursing.

(49) ~~(46)~~ Nursing Personnel. Licensed nurses and certified nurse aides, who provide nursing care.

(50) ~~(47)~~ On-Duty/On-Site. A staff person who is on the facility's premises and has the obligation to carry out any job responsibilities designated in his/her job description.

(51) ~~(48)~~ On-Site. A staff person who is on the facility's premises but is only required to be on duty during an emergency.

~~(49) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(52) ~~(50)~~ Patient Care Plan. A written document prepared by the interdisciplinary team for a patient receiving end stage renal disease services.

(53) ~~(51)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(54) ~~(52)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(55) (53) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

~~(54) Physician's Assistant. A person who is currently licensed by the Tennessee Board of Medical Examiners and Committee on Physician Assistants and has obtained prescription writing authority pursuant to T.C.A. 63-19-107(2)(A).~~

(56) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(57) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

(Rule 1200-08-32-.01, continued)

3. Specify both 1 and 2.

(58) ~~(55)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(59) ~~(56)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(60) ~~(57)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(61) ~~(58)~~ Referring physician. The physician who refers the patient to the renal dialysis clinic for treatment.

(62) ~~(59)~~ Renal dialysis clinic. Any institution, facility, place or building devoted to the provision of renal dialysis on an outpatient basis to persons diagnosed with end stage renal disease.

(63) ~~(60)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(64) ~~(61)~~ Shall or Must. Compliance is mandatory.

(65) ~~(62)~~ Social Worker. A person who is licensed by the Tennessee Board of Social Worker Certification and Licensure, if applicable, and (1) Has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education; or (2) Has served for at least 2 years as a social worker, 1 year of which was in a dialysis unit or transplantation program and has established a consultative relationship with a social worker who qualifies in paragraph (1) of this definition.

(66) ~~(63)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(67) ~~(64)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(68) ~~(65)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(69) ~~(66)~~ Survey. An on-site examination by the Department to determine compliance with state and federal regulations.

(70) ~~(67)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

(71) ~~(68)~~ Treating Physician. The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

(Rule 1200-08-32-.01, continued)

~~(69) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(72) ~~(70)~~ Water Treatment. The process of treating water used for dialysis purposes in order to maintain a continuous water supply that meets AAMI (Association for the Advancement of Medical Instrumentation) standards.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed December 9, 2010 to have been effective March 9, 2011 was stayed for 28 days by the Government Operations Committee; new effective date March 29, 2011. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-32-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or any state, county or local governmental unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any renal dialysis clinic without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Satellite facilities shall be prohibited. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the renal dialysis clinic.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form provided by the department.

(b) Each initial and renewal application for licensure shall be submitted with the fee of one thousand eighty dollars ($1,080.00). All fees submitted are nonrefundable. Any applicant who files an application during the fiscal year must pay the full license fee. A fee must be submitted for each facility at each site for which licensure is being sought.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be accepted for treatment to the renal dialysis clinic until a license has been issued. Applicants shall not hold themselves out to the public as being a renal dialysis clinic until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules, including submission of all information required by T.C.A. §68-11-206(a)(1) or as later amended, and all information required by the Commissioner.

(d) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(e) The applicant shall allow the end stage renal dialysis clinic to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(Rule 1200-08-32-.12, continued)

(b) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within seven (7) business days and the Tennessee Department of Human Services, Adult Protective Services immediately as required by T.C.A. §71-6-101 et seq;

(c) To refuse treatment. The patient must be informed of the consequences of that decision. The refusal and its reason must be reported to the physician and documented in the medical record;

(d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;

(e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The renal dialysis clinic must have policies to govern access and duplication of the patient's record;

(f) To have appropriate assessment and management of pain; and

(g) To be involved in all aspects of their care.

(2) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003. Amendment filed December 15, 2005; effective February 28, 2006.*

1200-08-32-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each end stage renal dialysis clinic shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(Rule 1200-08-32-.13, continued)

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(Rule 1200-08-32-.13, continued)

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

6. any other adult who satisfies the requirements of 1200-08-32-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(Rule 1200-08-32-.13, continued)

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-32-.13(16)(c) thru 1200-08-32-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-32-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(Rule 1200-08-32-.13, continued)

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-32-.13(20) thru 1200-08-32-.13(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-32-.13(20) thru 1200-08-32-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(Rule 1200-08-32-.13, continued)

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

~~(g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.~~

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the

(Rule 1200-08-32-.13, continued)

provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any

(Rule 1200-08-32-.13, continued)

contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-32-.14 DISASTER PREPAREDNESS.

(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans, for the protection of all persons in the event of fire and other emergencies, for evacuation to areas of refuge and /or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans shall be readily available at all times in the telephone operator's position or at the security center. Each of the following plans shall be exercised annually prior to the month listed in each plan:

(a) Fire Safety Procedures Plan (to be exercised at any time during the year) shall include:

1. Minor fires;

2. Major fires;

3. Fighting the fire;

4. Evacuation procedures; and

5. Staff functions by department and job assignment.

(b) Tornado/Severe Weather Procedures Plan shall include:

1. Staff duties by department and job assignment; and

2. Evacuation procedures.

(c) Bomb Threat Procedures Plan (to be exercised at any time during the year) shall include:

1. Staff duties;

2. Search team, searching the premises;

3. Notification of authorities;

4. Location of suspicious objects; and

5. Evacuation procedures.

(d) Floods Procedures Plan, if applicable, shall include:

1. Staff duties;

2. Evacuation procedures; and

3. Safety procedures following the flood.

(e) Severe Cold Weather and Severe Hot Weather Procedures Plans shall include:

1. Staff duties;

(Rule 1200-08-32-.14, continued)

2. Equipment failures;

3. Insufficient HVAC on emergency power; and

4. Evacuation procedures.

(f) Earthquake Disaster Procedures Plan shall include:

1. Staff duties;

2. Evacuation procedures;

3. Safety procedures; and

4. Emergency services.

All facilities shall participate in the Tennessee Emergency Management local/county emergency plan on an annual basis. Participation includes but is not limited to filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation shall be maintained and shall be made available to survey staff as proof of participation.

(2) In the event of natural disaster or electrical power failure, no new dialysis procedures shall be begun, and dialysis procedures in progress shall be brought to conclusion as soon as possible.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003.*

1200-08-32-.15 APPENDIX I

~~(1) Physician Orders for Scope of Treatment (POST) Form~~

~~(This space intentionally left blank)~~

(1) Physician Orders for Scope of Treatment (POST) Form

(This space intentionally left blank)

(Rule 1200-08-32-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-32-.15, continued)

Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through E and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-32-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A Check One Box Only

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B Check One Box Only

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C Check One

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D Must be Completed

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-32-.15, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-32-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

I, _____, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

Agent: I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation: _____
Address: _____

Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation: _____
Address: _____

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

When Effective (mark one): ☐ I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself. ☐ I do not give such permission (this form applies only when I no longer have capacity).

Quality of Life: By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "**no**" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

☐ Yes ☐ No	**Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
☐ Yes ☐ No	**Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
☐ Yes ☐ No	**Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
☐ Yes ☐ No	**End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

(Rule 1200-08-32-.15, continued)

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐ Yes	☐ No	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2

(Rule 1200-08-32-.15, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

_____
Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-32-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

RULES
OF
DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-34
STANDARDS FOR HOME CARE ORGANIZATIONS
PROVIDING PROFESSIONAL SUPPORT SERVICES

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1200-08-34-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~ Administrator. A person who establishes policies and procedures and is responsible for the activities of the agency and its staff. This person may be a physician, registered nurse, therapist, or a person with at least one (1) year experience in a health or disability related field. The administrator of a home care organization may serve as both a home health agency and professional support service agency administrator if both agencies are owned by the same corporation or legal entity.

(3) ~~(2)~~ Adult. An individual who has capacity and is at least 18 years of age.

(4) ~~(3)~~ Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) ~~(4)~~ Agency. A home care organization providing professional support services.

(6) ~~(5)~~ Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) ~~(6)~~ Board. The Tennessee Board for Licensing Health Care Facilities.

(8) ~~(7)~~ Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a consumer to make health care decisions while having the capacity to do so. A consumer shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a consumer shall have the burden of proving lack of capacity.

(9) ~~(8)~~ Clinical Note. A written and dated notation containing a consumer assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the consumer.

(Rule 1200-08-34-.01, continued)

(10) ~~(9)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(11) ~~(10)~~ Competent. A consumer who has capacity.

(12) ~~(11)~~ Comprehensive Nursing assessment. An assessment conducted by a registered nurse which consists of four parts: completion of a Physical Status Review (PSR); consumer and family history; identification of health concerns, functional abilities, activities of daily living; and, completion of a head to toe physical assessment.

(13) ~~(12)~~ Consumer. Any person with a primary diagnosis of mental retardation or developmental disability served through the Division of Mental Retardation Services or the Department of Mental Health and Developmental Disabilities in need of nursing, occupational, physical or speech therapy through a professional support service agency.

(14) ~~(13)~~ Department. The Tennessee Department of Health.

(15) ~~(14)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(16) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(17) ~~(15)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(18) ~~(16)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(19) ~~(17)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(20) ~~(18)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(21) ~~(19)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. §32-11-103(5).

(22) ~~(20)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(23) ~~(21)~~ Health Care Decision-maker. In the case of a consumer who lacks capacity, the consumer's health care decision-maker is one of the following: the consumer's health care agent as specified in an advance directive, the consumer's court-appointed guardian or conservator with health care decision-making authority, the consumer's surrogate as determined pursuant to Rule 1200-08-34-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(24) ~~(22)~~ Health Care Institution. A health care institution as defined in T.C.A. §68-11-1602.

(Rule 1200-08-34-.01, continued)

(25) ~~(23)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(26) ~~(24)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(27) ~~(25)~~ Individual Support Plan (ISP). The document resulting from a process of person-centered planning. The ISP describes in detail the person, including his/her vision for his/her future, preferences, non-negotiables, and other information required to support the person in daily life. The ISP contains outcomes to be achieved with the assistance of the person's Circle of Support that relate to the person's vision for the future. The ISP is written upon a person's enrollment in Department of Mental Retardation Services and updated thereafter as changes occur in the individual's life, or at least annually.

(28) ~~(26)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(29) ~~(27)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(30) ~~(28)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(31) ~~(29)~~ Life Threatening or Serious Injury. Injury requiring the consumer to undergo significant additional diagnostic or treatment measures.

(32) ~~(30)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic, or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to consumers. The medical record shall meet the standards established in the contractual agreement between the state agency financially responsible for services to individuals with mental retardation or developmental disabilities.

(33) ~~(31)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the consumer or other medical or surgical treatments to achieve the expressed goals of the informed consumer. In the case of the incompetent consumer, the consumer's representative expresses the goals of the consumer.

(34) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(35) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(36) ~~(32)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(37) ~~(33)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(Rule 1200-08-34-.01, continued)

~~(34) Patient/Consumer Abuse. Patient/consumer neglect, intentional infliction of pain, injury, or mental anguish. Patient/consumer abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or consumer; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient/consumer abuse" for purposes of these rules.~~

(38) ~~(35)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(39) ~~(36)~~ Personally Informing. A communication by any effective means from the consumer directly to a health care provider.

(40) ~~(37)~~ Physical Status Report (PSR). An instrument used by a registered nurse or other designated professional staff to determine level of risk and define the required health services and supports.

(41) ~~(38)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(42) ~~(39)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(43) ~~(40)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(44) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(45) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(46) (41) Plan of Care. Health care plan resulting from the comprehensive nursing assessment and/or therapy plan identifying the need for nursing, physical, occupational, or speech therapy for consumers of professional support services. The plan shall meet the standards

(Rule 1200-08-34-.01, continued)

established in the contractual agreement between the state agency financially responsible for services to individuals with mental retardation or developmental disabilities.

(47) ~~(42)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(48) ~~(43)~~ Professional Support Services. Nursing, occupational, physical or speech therapy services provided to individuals with mental retardation or developmental disabilities pursuant to a contract with the state agency financially responsible for such services.

(49) ~~(44)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(50) ~~(45)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the consumer's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(51) ~~(46)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(52) ~~(47)~~ Shall or Must. Compliance is mandatory.

(53) ~~(48)~~ Site Code. An approved location from which the professional support services may be provided as deemed by the Department of Mental Retardation Services with written notice provided to the Department of Health by the professional support service agency for each site code approved for such agency.

(54) ~~(49)~~ Speech Language Pathologist. A person currently licensed as such by the Tennessee Board of Communication Disorders and Sciences or, for purposes of these rules, a Speech Language Pathologist who is currently in their Clinical Fellowship Year.

(55) ~~(50)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(56) ~~(51)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(57) ~~(52)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(58) ~~(53)~~ Surrogate. An individual, other than a consumer's agent or guardian, authorized to make a health care decision for the consumer.

(59) ~~(54)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the consumer.

~~(55) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(Rule 1200-08-34-.01, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-34-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county, or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any home care organization providing professional support services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure. The name of the agency shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the agency.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Home care organizations authorized to provide only professional support services shall pay an annual fee of one thousand eighty dollars ($1,080.00), except that this annual fee shall be two hundred seventy dollars ($270.00) for (i) home care organizations that also pay a fee to be licensed by the Department of Mental Health and Developmental Disabilities; (ii) home care organizations owned and operated by therapists who pay a fee to be licensed under Title 63, Chapter 13 or 17; or (iii) home care organizations that are owned and controlled by another home care organization that pay an annual license fee of at least one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Consumers shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the agency providing professional support services.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the home care organization providing professional support services to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

1200-08-34-.04 ADMINISTRATION.

(1) The home care organization providing professional support services must organize, manage and administer its services to attain and maintain the highest practicable functional capacity for each consumer regarding nursing and therapy needs as indicated by the plan of care.

(2) The agency shall develop and maintain administrative control of any site code.

(3) The organizational structure, professional support services provided, administrative control and lines of authority for the delegation of responsibility down to the consumer care level shall be clearly set forth in writing and shall be readily identifiable. Administrative and supervisory functions shall not be delegated to another agency.

(4) A governing body (or designated person(s) so functioning) must: assume full legal authority and responsibility for the management and provision of all professional support services; fiscal operations; quality assessment and performance improvement programs. The governing body shall appoint a qualified administrator who is responsible for the day-to-day operation of the organization and is responsible for designating people to carry out these functions.

(5) The administrator shall organize and direct the organization's ongoing functions, the professional personnel and the staff; employ qualified personnel and ensure adequate staff education and evaluation for all personnel involved in direct care; ensure the accuracy of public information materials and activities; and implement an effective budgeting and accounting system. A person with sufficient experience and training shall be authorized in writing to assume temporary duty during the administrator's short-term absence. The designee may be a physician, registered nurse, or a therapist.

(6) An agency shall have a duly qualified administrator accessible during normal operating hours. Any change of administrators shall be reported to the Department within fifteen (15) days.

~~(7) The administrator of a home care organization may serve as both a home health agency and professional support service agency administrator if both agencies are owned by the same corporation or legal entity.~~

(7) An administrator shall serve no more than one (1) licensed home care organization unless that home care organization provides other categories of home care organization services under the same ownership and at the same location.

(8) The agency shall maintain an office with a working telephone that is staffed or takes voice messages during normal business hours.

(9) When licensure is applicable for a particular position of employment, a copy of the current license or the number and renewal number of the employee's current license must be maintained in the employee's personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee. Proof of adequate medical screenings to exclude communicable disease shall be maintained in the file of each employee.

(10) Personnel practices shall be supported by written personnel policies. Personnel records shall include at a minimum: job descriptions, verification of references and credentials, and performance evaluations. Personnel records must be kept current. Agencies employing only one (1) staff member must maintain a personnel record with verification of current credentials.

(Rule 1200-08-34-.04, continued)

(11) An ongoing educational program shall be planned and conducted for the development and improvement of skills of all the agency's personnel engaged in delivery of professional support services. Each employee shall receive appropriate orientation to the agency, its policies, the employee's position, and the employee's duties. Records shall be maintained which indicate the subject of and attendance at such staff development programs.

(12) If personnel, under hourly or per visit contracts, are utilized by the agency, there shall be a written contract between such personnel and the agency clearly designating:

(a) That consumers are accepted for care only by the agency;

(b) Which professional support services are to be provided;

(c) That it is necessary to conform to all applicable agency policies including personnel qualifications;

(d) The responsibility for participating in developing plans of care;

(e) The manner in which professional support services will be controlled, coordinated and evaluated by the agency;

(f) The procedures for submitting clinical and progress notes, scheduling visits and periodic consumer evaluations; and

(g) The procedures for determining charges and reimbursement.

(13) Supervision of unlicensed personnel must occur at a minimum of every thirty (30) days and must include direct observation of the provision of care, record review and individual conferences.

(14) Whenever the rules of this chapter require that a licensee develop a written policy, plan, procedure, technique or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. An agency which violates a required policy also violates the rule establishing the requirement.

(15) Policies and procedures shall be consistent with professionally recognized standards of practice.

(16) All agencies shall adopt appropriate policies regarding the testing of consumers and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(17) No agency shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, the Department of Human Services Adult Protective Services, the state agency financially responsible for services to consumers, or the Comptroller of the State Treasury. An agency shall neither retaliate nor discriminate because of information lawfully provided to these authorities, because of a person's cooperation with them or because a person is subpoenaed to testify at a hearing involving one of these authorities.

(18) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(Rule 1200-08-34-.04, continued)

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(19) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(20) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010.*

1200-08-34-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(1) Consumers shall be accepted to receive professional support services on the basis of a reasonable expectation that the consumer's nursing and therapy needs can be met adequately by the agency.

(2) Professional support services shall be provided as prescribed by the attending physician. The plan for providing professional support services and the expected outcomes shall be incorporated into the consumer's plan of care or individual support plan.

(3) The agency staff shall determine if the consumer's needs can be met by the agency's services and capabilities.

(4) Every person admitted for professional support services by any agency covered by these rules shall be provided services as prescribed by the consumer's physician, as defined in this chapter, who holds a license in good standing. The name of the consumer's attending physician shall be recorded in the consumer's medical record.

(5) The agency staff shall obtain the consumer's or his/her designee's written consent for professional support services.

(6) The signed consent form shall be included with the consumer's individual clinical record.

(7) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(8) No medication or treatment shall be provided to any consumer of an agency except on the order of a physician lawfully authorized to give such an order.

(9) A medical record shall be developed and maintained for each consumer admitted.

(Rule 1200-08-34-.12, continued)

(c) To be involved in the decision making and all aspects of their care;

(d) To be free from mental and physical abuse. Should this right be violated, the agency must notify the Department within five (5) business days and the Tennessee Department of Human Services, Adult Protective Services as required by T.C.A. §71-6-101 et seq.;

(e) To refuse treatment. The consumer must be informed of the consequences of that decision, and the refusal and its reason must be reported to the physician and documented in the medical record;

(f) To refuse experimental treatment and drugs. The consumer's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record; and

(g) To have their records kept confidential and private. Written consent by the consumer must be obtained prior to release of information except to persons authorized by law. If the consumer lacks capacity, written consent is required from the consumer's health care decision maker. The agency must have policies to govern access and duplication of the consumer's record.

(2) Each consumer has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment, including resuscitative services. This right of self-determination may be effectuated by an advance directive.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendment filed December 2, 2005; effective February 15, 2006.*

1200-08-34-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each professional support services agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a consumer who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual consumers. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the consumer could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the consumer could have made while having capacity.

(3) The advance directive shall be in writing, signed by the consumer, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the consumer by blood, marriage, or adoption and would not be entitled to any portion of the estate of the consumer upon the death of the consumer. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(Rule 1200-08-34-.13, continued)

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the consumer lacks capacity, and ceases to be effective upon a determination that the consumer has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a consumer lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the consumer's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the consumer's best interest. In determining the consumer's best interest, the agent shall consider the consumer's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the consumer's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A consumer having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A consumer having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(Rule 1200-08-34-.13, continued)

(b) A surrogate may make a health care decision for a consumer who is an adult or emancipated minor if and only if:

1. the consumer has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a consumer who lacks capacity, the consumer's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the consumer is receiving health care.

(d) The consumer's surrogate shall be an adult who has exhibited special care and concern for the consumer, who is familiar with the consumer's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the consumer's spouse, unless legally separated;

2. the consumer's adult child;

3. the consumer's parent;

4. the consumer's adult sibling;

5. any other adult relative of the consumer; or

6. any other adult who satisfies the requirements of 1200-08-34-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the consumer shall be eligible to serve as the consumer's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the consumer or in accordance with the consumer's best interests;

2. The proposed surrogate's regular contact with the consumer prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the consumer during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(Rule 1200-08-34-.13, continued)

(h) If the consumer lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-34-.13(16)(c) thru 1200-08-34-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the consumer after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the consumer's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the consumer's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the consumer's best interest. In determining the consumer's best interest, the surrogate shall consider the consumer's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the consumer may make all health care decisions for the consumer that the consumer could make on the consumer's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a consumer upon a decision of the surrogate only when the designated physician and a second independent physician certify in the consumer's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the consumer is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-34-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the consumer's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the consumer by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a consumer to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(Rule 1200-08-34-.13, continued)

(a) A guardian shall comply with the consumer's individual instructions and may not revoke the consumer's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a consumer to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a consumer lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the consumer's current clinical record and communicate the determination to the consumer, if possible, and to any person then authorized to make health care decisions for the consumer.

(19) Except as provided in 1200-08-34-.13(20) thru 1200-08-34-.13(22), a health care provider or institution providing care to a consumer shall:

(a) comply with an individual instruction of the consumer and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the consumer; and

(b) comply with a health care decision for the consumer made by a person then authorized to make health care decisions for the consumer to the same extent as if the decision had been made by the consumer while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the consumer or to a person then authorized to make health care decisions for the consumer.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-34-.13(20) thru 1200-08-34-.13(22) shall:

(a) promptly so inform the consumer, if possible, and any person then authorized to make health care decisions for the consumer;

(b) provide continuing care to the consumer until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the consumer or person then authorized to make health care decisions for the consumer refuses assistance, immediately make all reasonable efforts to assist in the transfer of the consumer to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a consumer has the same rights as the consumer to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a consumer, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a consumer in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the consumer is an adult who is capable of making an informed decision, the consumer's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the consumer is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the consumer be resuscitated by the person authorized to consent on the consumer's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a consumer in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

~~(g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.~~

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care

(Rule 1200-08-34-.13, continued)

Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise

(Rule 1200-08-34-.13, continued)

incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1801 through 68-11-1815.* ***Administrative History:*** *Original rule filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-34-.14 RESERVED.

~~**1200-08-34-.15 APPENDIX I**~~

~~(1) Physician Orders for Scope of Treatment (POST) Form~~

(Rule 1200-08-34-.15, continued)

~~(This space intentionally left blank)~~

(1) Physician Orders for Scope of Treatment (POST) Form

(This space intentionally left blank)

(Rule 1200-08-34-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ Resuscitate (CPR) ☐ Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids (provide other measures to assure comfort)** ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____

Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify)	**The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

(Rule 1200-08-34-.15, continued)

Name (print)	Signature	Relationship (write "self" if patient)	
Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through E and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-34-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST") This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-34-.15, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-34-.15, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

I, _____, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

Agent: I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation:_____
Address: _____

Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____Phone #: _____ Relation: _____
Address: _____

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

When Effective (mark one): ☐ I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself. ☐ I do not give such permission (this form applies only when I no longer have capacity).

Quality of Life: By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "**no**" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

☐ Yes ☐ No	**Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
☐ Yes ☐ No	**Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
☐ Yes ☐ No	**Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
☐ Yes ☐ No	**End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that

(Rule 1200-08-34-.15, continued)
medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐ Yes	☐ No	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2

(Rule 1200-08-34-.15, continued)
Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

_____
Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-34-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.* ***Administrative History:*** *Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

RULES
OF
DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-35
STANDARDS FOR OUTPATIENT DIAGNOSTIC CENTERS

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1200-08-35-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) ~~(1)~~Acceptable Plan of Correction. The Licensing Division approves an Outpatient Diagnostic Center's plan to correct deficiencies identified during an on-site survey conducted by the Survey Division or its designated representative. The plan of correction shall be a written document and shall provide, but not limited to, the following information:

(a) How the deficiency will be corrected.

(b) Who will be responsible for correcting the deficiency.

(c) The date the deficiency will be corrected.

(d) How the facility will prevent the same deficiency from re-occurring.

(3) ~~(2)~~Accredited Record Technician (ART). A person currently accredited as such by the American Medical Records Association.

(4) ~~(3)~~Adult. An individual who has capacity and is at least 18 years of age.

(5) ~~(4)~~Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) ~~(5)~~Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(7) ~~(6)~~Board. The Tennessee Board for Licensing Health Care Facilities.

(8) ~~(7)~~ Cancer Treatment and Radiation Clinic. A facility in which the only procedures performed are diagnostic and therapeutic radiology, chemotherapy and related services.

(9) ~~(8)~~Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the

(Rule 1200-08-35-.01, continued)

capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) ~~(9)~~ Cardiac Catheterization. An invasive procedure in which a transluminal catheter is inserted into the femoral, internal jugular or antecubital vein and guided through the venous system into the heart chambers and/or coronary arteries while the patient is under conscious sedation in order to provide anatomic information on the heart chambers, coronary arteries, valves, myocardium, and the great vessels.

(11) ~~(10)~~ Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth–to–mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(12) ~~(11)~~ Certified Registered Nurse Anesthetist. A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.

(13) ~~(12)~~ Collaborative Plan. The formal written plan between the mid-level practitioners and licensed physician.

(14) ~~(13)~~ Collaborative Practice. The implementation of the collaborative plan that outlines procedures for consultation and collaboration with other health care professionals, e.g., licensed physicians, mid-level practitioners or nurse midwives.

(15) (14) Commissioner. Commissioner of the Tennessee Department of Health or his or her authorized representative.

(16) ~~(15)~~ Competent. A patient who has capacity.

(17) ~~(16)~~ Computerized Tomography. A non-invasive radiological diagnostic procedure that may or may not include nuclear medical dye.

(18) ~~(17)~~ Conscious Sedation. A drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are usually required to maintain a patient airway, and spontaneous ventilation is usually adequate. Cardiovascular function is usually maintained.

(19) ~~(18)~~ Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(20) ~~(19)~~ Department. The Tennessee Department of Health.

(21) ~~(20)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

~~(21) Do Not Resuscitate (DNR) Order. An order entered by the patient's treating physician in the patient's medical records which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation.~~

(Rule 1200-08-35-.01, continued)

(22) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(23) ~~(22)~~ Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(24) ~~(23)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(25) ~~(24)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(26) ~~(25)~~ Graduate Registered Nurse Anesthetist. A registered nurse currently licensed in Tennessee who is a graduate of a nurse anesthesia educational program that is accredited by the American Association of Nurse Anesthetist's Council on Accreditation of Nurse Anesthesia Educational Programs and awaiting initial certification examination results, provided that initial certification is accomplished within eighteen (18) months of completion of an accredited nurse anesthesia educational program.

(27) (26) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(28) ~~(27)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(29) ~~(28)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(30) ~~(29)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(31) ~~(30)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-35-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(32) ~~(31)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(33) ~~(32)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(34) ~~(33)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(35) ~~(34)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(36) ~~(35)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(Rule 1200-08-35-.01, continued)

(37) ~~(36)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(38) ~~(37)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all applicable rules and regulations.

(39) ~~(38)~~ Life Threatening or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(40) ~~(39)~~ Lithotripsy. A technique using extracorporeal shock waves to break up stones that form in the kidney, bladder, ureters, or gallbladder while monitoring through x-ray or ultrasound.

(41) ~~(40)~~ Magnetic Resonance Imaging (MRI). A non-invasive diagnostic technique that produces computerized images of internal body tissues and is based on nuclear magnetic resonance of atoms within the body induced by the application of radio waves.

(42) ~~(41)~~ Mammography. A non-invasive radiological procedure used to take pictures of the breasts in order to diagnose tumors or cysts.

(43) ~~(42)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(44) ~~(43)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(45) ~~(44)~~ Medical Staff. An organized body composed of individuals appointed by the Outpatient Diagnostic Center governing board. All members of the medical staff shall be licensed to practice in Tennessee, with the exception of interns and residents.

(46) ~~(45)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(47) ~~(46)~~ Mid-Level Practitioner. A registered nurse licensed in Tennessee who holds a master's degree in a clinical nursing specialty, national certification through the ANCC or American Academy of Nurse Practitioners and holds a certificate of fitness to prescribe from the Tennessee Board of Nursing.

(48) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(49) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(Rule 1200-08-35-.01, continued)

(50) ~~(47)~~ N.F.P.A. National Fire Protection Association.

(51) ~~(48)~~ Nurse Midwife. A person currently licensed by the Tennessee Board of Nursing as a registered nurse (R.N.) and qualified to deliver midwifery services or certified by the American College of Nurse-Midwives.

(52) ~~(49)~~ Outpatient Diagnostic Center. Any facility providing outpatient diagnostic services (computerized tomography, magnetic resonance imaging, positron emission tomography, or other imaging technology developed after June 9, 2005 which provides substantially the same functionality), unless the outpatient diagnostic services are provided as the services of another licensed healthcare institution that reports such outpatient diagnostic services on its joint annual report, or the facility is otherwise excluded from this definition. Outpatient diagnostic center does not include a physician or dental practice that is conducted at a location occupied and controlled by one or more physicians or dentists licensed under Title 63, if the outpatient diagnostic services are ancillary to the specialties of the physicians' practice or are provided primarily for persons who are patients of the physicians or dentists in the practice for purposes other than outpatient diagnostic services. Outpatient diagnostic centers in existence prior to the effective date of this rule will be required to obtain licensure by the department of health and comply with relevant reporting requirements.

(53) ~~(50)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

~~(51) Patient Abuse. atient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(54) ~~(52)~~ Percutaneous Transluminal Coronary Angioplasty. An invasive diagnostic procedure in which a transluminal catheter is guided through the femoral, subclavian, internal jugular or antecubital vein allowing the passage of a balloon-tipped catheter distally into the coronary artery while viewing through radiological pictures. The balloon is aligned within the stenosis and inflated to dilate the vessel with or without the use of anticoagulants to reduce the incidence of thrombosis at the site of balloon dilation and calcium blockers or nitrates to reduce coronary spasm. Conscious sedation and local anesthesia at catheter insertion site are utilized during the procedure.

(55) ~~(53)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(56) ~~(54)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(57) ~~(55)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

~~(56) Physician Assistant. A person who is licensed by the Tennessee Board of Medical Examiners and Committee on Physician Assistants and has obtained prescription writing authority pursuant to T.C.A. §63-19-107(2)(A).~~

(Rule 1200-08-35-.01, continued)

(58) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(59) Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(60) ~~(57)~~ Positron Emission Tomography (PET Scan). A non-invasive radiological procedure producing a sectional view of the body constructed by positron-emission tomography.

(61) ~~(58)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(62) ~~(59)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(63) ~~(60)~~ Radiological Technologist. A person currently certified as such by the American Society of Radiological Technologists.

(64) ~~(61)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(65) ~~(62)~~ Registered Nurse (R.N.). A person currently licensed as such by the Tennessee Board of Nursing.

(66) ~~(63)~~ Registered Record Administrator (RRA). A person currently registered as such by the American Medical Records Association.

(67) ~~(64)~~ Shall or Must. Compliance is mandatory.

(68) ~~(65)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(69) ~~(66)~~ Stereotactic Procedure. An invasive technique utilized for precisely directing the tip of a delicate needle or beam of radiation in three planes using coordinates provided by medical imaging such as x-ray or CT scan in order to reach a specific location in the body, eg. tumor.

(Rule 1200-08-35-.01, continued)

(70) ~~(67)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(71) ~~(68)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(72) ~~(69)~~ Transfer. The movement of a patient at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice.

(73) ~~(70)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(71) Universal Do Not Resuscitate Order. A written order that applies regardless of treatment setting and that is signed by the patient's physician which states that in the event a patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(74) ~~(72)~~ Vascular Embolization. Therapeutic introduction of various substances into the circulation to occlude vessels, either to arrest or prevent hemorrhaging, to devitalize a structure, tumor or organ by occluding its blood supply or to reduce blood flow to an arteriovenous malformation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-216, 68-11-224 and 68-11-1802.* ***Administrative History****: Original rule filed October 26, 2005; effective January 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-35-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county, or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any Outpatient Diagnostic Center as defined, without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30. The license shall be posted in a conspicuous place in the Outpatient Diagnostic Center.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the Outpatient Diagnostic Center until a license has been issued. Applicants shall not hold themselves out to the public as being an Outpatient Diagnostic Center until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by Tennessee Code Annotated § 68-11-206(l), or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(Rule 1200-08-35-.12, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.*
Administrative History: *Original rule filed October 26, 2005; effective January 9, 2006.*

1200-08-35-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this Rule, each outpatient diagnostic center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the patient could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the patient could have made while having capacity.

(3) The advance directive shall be in writing, signed by the patient, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

(5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.

(6) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

(7) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the agent shall consider the patient's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and

(Rule 1200-08-35-.13, continued)

a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A patient having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and

2. no agent or guardian has been appointed, or

3. the agent or guardian is not reasonably available.

(c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

(d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. the patient's spouse, unless legally separated;

2. the patient's adult child;

3. the patient's parent;

4. the patient's adult sibling;

5. any other adult relative of the patient; or

(Rule 1200-08-35-.13, continued)

6. any other adult who satisfies the requirements of 1200-08-35-.13(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;

2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the patient lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-35-.13(16)(c) thru 1200-08-35-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(k) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision

(Rule 1200-08-35-.13, continued)

or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in 1200-08-35-.13(16)(m):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.

(m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:

1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(19) Except as provided in 1200-08-35-.13(20) thru 1200-08-35-.13(22), a health care provider or institution providing care to a patient shall:

(a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(Rule 1200-08-35-.13, continued)

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) contrary to a policy of the institution which is based on reasons of conscience, and

(b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-35-.13(20) thru 1200-08-35-.13(22) shall:

(a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

(c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision; and

(d) if a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(c) complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(Rule 1200-08-35-.13, continued)

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a patient in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the Universal Do Not Resuscitate Order by all facilities. A Universal Do Not Resuscitate Order may be used by a physician for a patient with whom the physician has a physician/patient relationship, but only:~~

~~1. with the consent of the patient; or~~

~~2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

~~(e) When a person with a Universal Do Not Resuscitate Order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the Universal Do Not Resuscitate Order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the Universal Do Not Resuscitate Order accompanies the individual in transport to the receiving health care facility. Upon admission, the receiving facility shall make the Universal Do Not Resuscitate Order a part of the individual's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the~~

(Rule 1200-08-35-.13, continued)

~~Universal Do Not Resuscitate Order form when transferring an individual from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

~~(g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.~~

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(Rule 1200-08-35-.13, continued)

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility

(Rule 1200-08-35-.13, continued)

prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1805, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.* ***Administrative History****: Original rule filed October 26, 2005; effective January 9, 2006. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-35-.14 DISASTER PREPAREDNESS.

(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:

(a) Fire Safety Procedures Plan shall include:

1. Minor fires;
2. Major fires;
3. Fighting the fire;
4. Evacuation procedures;
5. Staff functions.

(b) Tornado/Severe Weather Procedures Plan shall include:

1. Staff duties;
2. Evacuation procedures.

(c) Flood Procedure Plan, if applicable:

1. Staff duties;
2. Evacuation procedures;

(Rule 1200-08-35-.14, continued)

3. Safety procedures following the flood.

(d) Earthquake Disaster Procedures Plan:

1. Staff duties;

2. Evacuation procedures;

3. Safety procedures;

4. Emergency services.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History****: Original rule filed October 26, 2005; effective January 9, 2006.*

1200-08-35-.15 APPENDIX I

~~(1) Physician Orders for Scope of Treatment (POST) Form~~

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(1) Physician Orders for Scope of Treatment (POST) Form

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(Rule 1200-08-35-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ Resuscitate (CPR) ☐ Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-35-.15, continued)

Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through E and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-35-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-35-.15, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(2) Advance Care Plan Form

(Rule 1200-08-35-.15, continued)

ADVANCE CARE PLAN
(Tennessee)

I, _____, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

Agent: I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation:_____
Address: _____

Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation: _____
Address: _____

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

When Effective (mark one): ☐ I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself. ☐ I do not give such permission (this form applies only when I no longer have capacity).

Quality of Life: By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "**no**" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

☐ Yes ☐ No	**Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
☐ Yes ☐ No	**Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
☐ Yes ☐ No	**Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
☐ Yes ☐ No	**End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

(Rule 1200-08-35-.15, continued)

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐ Yes	☐ No	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2

(Rule 1200-08-35-.15, continued)

Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

_____
Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-35-.15, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.*
Administrative History: *Original rule filed August 28, 2012; effective November 26, 2012.*

RULES
OF
DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-36
STANDARDS FOR ADULT CARE HOMES — LEVEL 2

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1200-08-36-.01 DEFINITIONS.

~~(1) "Abuse" means the infliction of physical pain, injury, or mental anguish or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.~~

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) "Activities of Daily Living (ADLs)" means those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, ambulating, and medication management.

(3) "Adequate evacuation" means the ability of the adult care home provider, resident manager, or substitute caregiver, including such additional minimum staff as may be required by the Board in regulation, to evacuate all residents from the dwelling within five (5) minutes.

~~(4) "Administering medication" means the direct application of a single dose of a medication to the body of a resident by injection, inhalation, ingestion, topical application or by any other means.~~

(4) "Administering medication" means the direct application of a single dose of medication to the body of a resident by injection, inhalation, ingestion, topical application or by any other means and the placement of a single dose of medication into a container.

(5) "Adult" means a person 18 years of age or older.

(6) "Adult care home (ACH)" means a single family residence licensed pursuant to this act in which twenty-four (24) hour residential care, including assistance with activities of daily living, is provided in a homelike environment to no more than five (5) elderly or disabled adults.

(7) "Adult care home provider" means a person who is twenty-one (21) years of age or older that owns and operates an adult care home.

(8) "Adult care home resident" means an individual residing at the adult care home who is ventilator dependent or who suffers from a traumatic brain injury.

(Rule 1200-08-36-.01, continued)

(9) "Assessment" means a procedure for determining the nature and extent of the problem(s) and needs of a resident or potential resident to ascertain if the ACH can adequately address those problems, meet those needs, and secure information for use in the development of the individual care plan.

(10) "Assistance with self-administration of medication" means assistance in reading labels, opening medication containers or packaging, reminding residents of their medication, or observing the resident while taking medication in accordance with the plan of care.

(11) ~~(10)~~ "Board" means the Board for Licensing Health Care Facilities.

(12) ~~(11)~~ "Cardiopulmonary resuscitation (CPR)" means the administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(13) ~~(12)~~ "Disabled" means an individual who is ventilator dependent or who has a traumatic brain injury.

~~(13) "Do Not Resuscitate (DNR) Order" means a written order entered by the resident's treating physician in the resident's medical record which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.~~

(14) "Do-not-resuscitate order (DNR)" means a written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) ~~(14)~~ "Elderly" means an individual who is fifty-five (55) years of age or older.

(16) ~~(15)~~ "Emergency" means any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.

(17) ~~(16)~~ "Exploitation" shall have the same meaning as set forth in T.C.A. §68-11-1004(a)(2).

(18) ~~(17)~~ "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. §32-11-103(5).

(19) ~~(18)~~ "Health care decision" means an individual's consent, refusal of consent or withdrawal of consent to health care.

(20) ~~(19)~~ "Health care decision-maker" means that in the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to T.C.A. § 68-11-1806, or the individual's designated physician pursuant to T.C.A. § 68-11-1802(a)(4).

(21) ~~(20)~~ "Home like" means an environment that promotes the dignity, security and comfort of residents through the provision of personalized care and services and encourages independence, choice and decision-making by the residents.

(Rule 1200-08-36-.01, continued)

(22) ~~(21)~~ "Infectious waste" means solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure could result in an infectious disease.

(23) ~~(22)~~ "Level 2 home" means an adult care home that provides services to residents who are ventilator dependent or who have a traumatic brain injury.

(24) ~~(23)~~ "Licensed health care professional" means any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to Tennessee Code Annotated §§ 63-7-101 et seq.), dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, clinical social worker, respiratory therapist, speech-language pathologist, and emergency service personnel.

(25) ~~(24)~~ "Licensee" means the person, association, partnership, corporation, company or public agency to which the license is issued. For the purposes of these rules, the term "licensee" is synonymous to "adult care home provider."

(26) ~~(25)~~ "Medical record" means documentation of medical histories, nursing and treatment records, care needs summaries, physician orders, and records of treatment and medication ordered and given which must be maintained by the ACH, regardless of whether such services are rendered by ACH staff or by arrangement with an outside source.

~~(26) "Misappropriation" means any taking, possession or use of the property of a vulnerable person, the elements of which constitute any criminal offense involving such property, or that constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.~~

(27) "Misappropriation of patient/resident property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(28) "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(29) ~~(27)~~ "NFPA" means the National Fire Protection Association.

~~(28) "Neglect" means the infliction of physical pain, injury, or mental anguish or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.~~

(30) ~~(29)~~ "Occupant" means anyone residing in or using the facility of the adult care home including residents, the adult care home provider, resident manager, substitute caregiver, staff, and an adult care home provider's family members or a resident manager's family members.

(31) ~~(30)~~ "Person" means an individual, association, estate, trust, corporation, partnership, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(Rule 1200-08-36-.01, continued)

(32) ~~(31)~~ "Personal services" means those services rendered to residents who need supervision or assistance in activities of daily living. Personal services do not include nursing or medical care.

(33) "Physician assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(34) "Physician orders for scope of treatment" or "POST" means written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(35) ~~(32)~~ "Power of Attorney for Health Care" means the legal designation of an agent to make health care decisions for the individual granting such power under T.C.A. §§ 34-6-201, et seq.

(36) ~~(33)~~ "Resident manager" means a person twenty-one (21) years of age or older who lives in an adult care home and oversees the day-to-day operation of the adult care home on behalf of the adult care home provider.

(37) ~~(34)~~ "Retaliation" means increasing charges, decreasing services, rights or privileges; taking or threatening to take any action to coerce or compel the resident to leave the facility; or abusing or threatening to harass or abuse a resident in any manner.

~~(35) "Self-administration of medication" means assistance in reading labels, opening dosage packaging, reminding residents of their medication, and observing the resident while taking medication in accordance with the plan of care.~~

(38) "Self-Administration of Medication" means the ability to administer medicine to oneself without assistance other than receiving help with reading labels or with physically opening the container or packaging, being reminded of one's medication, or being observed while taking medication in accordance with the plan of care.

(39) ~~(36)~~ "Specialized services" means services provided to ventilator dependent residents and residents with a traumatic brain injury.

(40) ~~(37)~~ "Substitute caregiver" means any person twenty-one (21) years of age or older who temporarily oversees care and services in an adult care home during the short-term absence of the adult care home provider or resident manager.

(41) ~~(38)~~ "Supervising health care provider" means the health care provider who has undertaken primary responsibility for an individual's health care.

(Rule 1200-08-36-.01, continued)

(42) ~~(39)~~ "Surrogate" means an individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident pursuant to T.C.A. § 68-11-1806.

(43) ~~(40)~~ "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial disability or impairment. Traumatic brain injury includes open and closed head injuries and may result in seizures, and/or mild, moderate, or severe impairment in one (1) or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. Such term does not include brain injuries induced by birth trauma, but may include brain injuries caused by anoxia and other related causes, infectious disease not of a degenerative nature, brain tumor, toxic chemical or drug reaction.

(44) ~~(41)~~ "Treating health care provider" means a health care provider directly or indirectly involved in providing health care to a resident at the time such care is needed by the resident.

~~(42) "Universal Do Not Resuscitate Order" means a written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.~~

(45) ~~(43)~~ "Ventilator dependent" means using an apparatus designed to control air that is breathed through it to either intermittently or continuously assist or control pulmonary ventilation, without which, the patient would not be able to breathe independently.

Authority: *T.C.A. §68-11-201 and 68-11-209.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

1200-08-36-.02 LICENSURE AND RENEWAL.

(1) Licensure. An applicant for an ACH license shall submit the following to the Board office:

(a) A completed application on a form approved by the Board;

(b) Nonrefundable application fee;

(c) The requirements contained in T.C.A. §68-11-206(a)(1) and (2);

(d) Demonstration of the ability to meet the financial obligations of the ACH with a financial statement prepared by a certified public accountant;

(e) A copy of a local business license (if one is required by the locality);

(f) A copy of any and all documents demonstrating the legal status of the business organization that owns the ACH. If the applicant is a corporation or a limited liability company the applicant must submit a certificate of good standing;

(g) Proof of liability insurance; and

(h) Any other documents or information requested by the Board.

(2) Before a license is granted, the applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(Rule 1200-08-36-.05, continued)

4. Health care worker education programs which may include:

(i) Types of resident care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from residents; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(d) An ACH shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(5) An ACH shall ensure that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the provision of any care or service of the ACH on the grounds of race, color, national origin, or handicap. An ACH shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

Authority: *T.C.A. §§ 39-17-1804, 68-11-207, 68-11-209, 68-11-268, 68-11-270 and 71-6-121.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

1200-08-36-.06 SERVICES PROVIDED.

(1) Medical Services. Each ACH shall provide twenty-four (24) hour nursing services furnished or supervised by the adult care home provider, resident manager or substitute caregiver. Licensed registered nurses and licensed practical nurses may provide all prescribed medical services that are within the scope of the nurse's professional license.

(2) Medical services in an ACH shall be provided by:

(a) Appropriately licensed staff of an ACH;

(b) Appropriately licensed or qualified contractors of an ACH;

(c) A licensed home care organization; or

(d) Another appropriately licensed entity.

(3) Standards for Medication Administration. An ACH shall:

(a) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care; and

(b) Ensure that all medications are kept in a locked, central location, separate from medications of the staff.

(c) Self-administration of Medication. Residents must have a physician or nurse practitioner's written order of approval to self-medicate. Residents able to handle their own medical regimen may keep medications in their own room in a locked storage container.

(Rule 1200-08-36-.06, continued)

(d) Injections. Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or by a licensed professional operating within the scope of the professional license.

~~(4) An ACH shall dispose of medications as follows:~~

~~(a) Upon discharge or death of a resident, unused medications shall be released to the resident, family member, or legal representative unless specifically prohibited by the attending physician or other authorized healthcare provider.~~

~~(b) Any scheduled drug that is misbranded, expired, deteriorated, or not kept under proper conditions or in containers with illegible or missing labels shall be returned to the pharmacy within five (5) working days after discovery for proper disposition by a licensed pharmacist.~~

~~(c) Any non-scheduled drug or device that is misbranded, expired, deteriorated, or not kept under proper conditions or in containers with illegible or missing labels shall be properly disposed of at the ACH in the presence of another licensed or certified professional.~~

(4) An ACH shall dispose of medications as follows:

(a) Upon discharge of a resident, unused prescription medication shall be released to the resident, the resident's family member, or the resident's legal representative, unless specifically prohibited by the attending physician.

(b) Upon the death of a resident, unused prescription medication must be destroyed in the manner outlined and by the individuals designated in the facility's medication disposal policy, unless otherwise requested by the resident's family member or the resident's legal representative and accompanied by a written order by a physician. The ACH's medication disposal policy shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(c) The ACH shall properly dispose of prescription medication administered by the facility in accordance with the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(d) The ACH may dispose of prescription medication that is self-administered by the resident according to the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines, or the facility may provide information to the resident's family member or the resident's legal representative regarding the proper method to dispose of the medication.

(e) If the resident is a hospice patient, hospice shall be responsible for disposing of the prescription medication upon death of the resident.

(f) The ACH's medication disposal policy shall also address the disposal of scheduled drugs, non-scheduled drugs, and devices that are misbranded, expired, deteriorated, not kept under proper conditions, and kept in containers with illegible or missing labels.

(5) An ACH shall provide personal services as follows:

(a) Each ACH shall provide each resident with at least the following personal services:

1. Protective care;

(Rule 1200-08-36-.06, continued)

2. Safety when in the ACH;

3. Daily awareness of the individual's whereabouts;

4. The ability and readiness to intervene if crises arise;

5. Room and board; and

6. Non-medical living assistance with activities of daily living.

(b) Recreational Services. An ACH shall provide to residents a daily regime of activities commensurate with the resident's needs, as identified through the assessment developed by the facility and specified in the resident's plan of care.

(c) Laundry services. An ACH shall:

1. Provide arrangements for laundry of ACH linens and residents' clothing;

2. Provide appropriate separate storage areas for soiled linens and residents' clothing; and

3. Maintain clean linens in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary.

(d) Dietary services.

1. An adult care home provider shall provide three (3) nutritionally balanced meals per day or shall make arrangements for meals on an as needed basis. The food must be adapted to the habits, preferences and physical abilities of the residents. Additional nourishment and/or snacks shall be provided to residents with special dietary needs or upon request.

2. There shall be no more than fourteen (14) hours between the evening and morning meals.

3. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140° F or above) or cold (41° F or less) as appropriate.

4. Meal planning and preparation shall take into consideration any special dietary needs of the resident, as prescribed by the resident's physician.

5. An ACH shall designate a person responsible for the food service, including the purchasing of adequate food supplies and the maintenance of sanitary practices in food storage, preparation and distribution. Sufficient arrangements or employees shall be maintained to cook and serve the food.

6. An ACH may contract with an outside food management company if the company has a dietitian who serves the ACH on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section while providing for constant liaison with the ACH for recommendations on dietetic policies affecting resident treatment.

7. An ACH shall have a current therapeutic diet manual approved by a dietitian readily available to all ACH personnel.

(Rule 1200-08-36-.06, continued)

8. Menus shall be planned one week in advance and posted in a location accessible to residents and families.

9. An ACH shall:

(i) Provide sufficient food provision capabilities and dining space;

(ii) Maintain and properly store a forty-eight (48) hour food supply at all times;

(iii) Provide appropriate, properly-repaired equipment and utensils for cooking and serving food to serve all residents;

(iv) Maintain a clean and sanitary kitchen; and

(v) Ensure employees shall wash and sanitize equipment, utensils and dishes after each use.

Authority: T.C.A. § 68-11-206, 68-11-209 and 68-11-270. **Administrative History:** Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.

1200-08-36-.07 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(1) Admissions.

(a) An ACH may only admit and continue to care for residents requiring specialized services.

(b) A Level 2 ACH may provide care to both ventilator dependent patients and patient with traumatic brain injury. In the event a resident with traumatic brain injury is also ventilator dependent, the resident may only be served by a Level 2 ACH meeting the requirements for ventilator dependent patients.

(c) ACHs may serve up to five (5) elderly or disabled adults who are unrelated to the adult care home provider by blood or marriage.

(d) An ACH provider may choose to serve one (1) or more elderly or disabled adult members of their own family as long as the adult care home provider serves at least two (2) additional elderly or disabled adults unrelated to the adult care home provider by blood or marriage. In no event shall an adult care home provider serve more than five (5) elderly or disabled residents in the licensed ACH.

(e) An ACH provider may permit members of the adult care home provider's or resident manager's family, who are not elderly or disabled, to reside in the ACH as long as it does not interfere with the care of the residents. For purposes of this rule, family member means spouse and children.

(f) An ACH may not admit or retain a resident who cannot be evacuated within five (5) minutes.

(g) An ACH shall upon admission of a resident:

1. Be able to identify at the time those residents whose needs for services are consistent with these rules and regulations, and those residents who should be transferred to a more appropriate level of care.

(Rule 1200-08-36-.07, continued)

2. Document plans and procedures to show evacuation of the resident within five (5) minutes.

3. Provide to each resident a written admission agreement signed and dated by the ACH provider and the resident or the resident's family member or representative and presented both verbally and in writing. The admission agreement shall be reviewed and updated as necessary as a part of the residential plan of care review process and contain the following:

   (i) A copy of the resident rights for the resident's review and signature;

   (ii) A copy of house rules and the rate schedules, including any resident liability for which the resident will be responsible;

   (iii) An accurate written statement providing that the adult care home provider shall give thirty (30) days written notice to the resident prior to making any changes in the rates;

   (iv) The consequences for non-payment of resident liability which includes involuntary discharge from the ACH;

   (v) An accurate written statement regarding services which will be provided residents upon admission;

   ~~(vi) Procedures for handling the transfer or discharge of residents that does not violate the residents' rights under the law or these rules.~~

   (vi) Procedures for handling the transfer or discharge of residents that does not violate the residents' rights under the law or these rules;

   (vii) A copy of the medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines, for resident's review and signature.

4. Disclose in writing to the resident or to the resident's legal representative, the identity of the ACH's primary liability insurance carrier. If the ACH is self-insured, its statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims.

5. Document evidence of annual vaccination against influenza for each resident, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccine, unless such vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

6. Document evidence of vaccination against pneumococcal disease for all residents who are sixty-five (65) years of age or older, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused the offer of vaccine. The facility shall provide or arrange for the pneumococcal vaccination of residents

(Rule 1200-08-36-.07, continued)

who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

(2) Discharges and Transfers.

(a) Residents may only be moved, transferred or discharged from an ACH for the following reasons:

1. Medical reasons. The resident has a medical or nursing condition that exceeds the level of health services the facility provides;

2. Welfare of the resident or of other residents. This includes, but is not limited to the following: The ACH is unable to accomplish timely evacuation of the resident in the event of an emergency; the resident exhibits behavior that poses an imminent danger to self or others; the resident engages in behavior or actions that repeatedly and substantially interfere with the rights, health or safety of residents or others; or the resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others;

3. Nonpayment of patient liability; or

4. Closing or selling the facility.

(b) An ACH resident shall be discharged and transferred to another appropriate setting such as home, a hospital, or a nursing home when the resident, the resident's legal representative, or the resident's treating physician determines that the ACH cannot safely and effectively meet the resident's needs, including medical services.

(c) The Board may require that an ACH resident be discharged or transferred to another level of care if it determines that the resident's needs, including medical services, cannot be safely and effectively met in the ACH.

(d) In the event of a discharge or transfer due to medical reasons, for the welfare of the resident or for the welfare of other residents or due to nonpayment of patient liability, the adult care home provider shall give the resident written notice at least thirty (30) days prior to the proposed transfer or discharge.

(e) In the event of a discharge or transfer due to medical reasons, the welfare of the resident, or for the welfare of other residents, the ACH provider shall work with the Board, or for ACH services reimbursed through the TennCare CHOICES program, the member's care coordinator to develop a transition plan in order to maintain continuity of care for the resident and to minimize the impact of the transition. The ACH provider shall assist the resident in locating an alternate appropriate setting.

(f) In the case of a medical emergency that requires immediate action, the ACH provider shall give the resident written notice as soon as possible under the circumstances.

(g) In the event of discharge or transfer due to selling the facility to another ACH provider, the current ACH provider shall develop a transition plan for all residents to facilitate the transition to a new ACH and shall maintain its license and operation of the facility until the point in time the new ACH's license is approved.

(h) In the event of discharge or transfer due to the closing of the facility, the ACH provider shall provide ninety (90) day advance notice to residents and shall work with the board, or for ACH services reimbursed through the TennCare CHOICES program, the MCO as appropriate, to develop a transition plan to maintain continuity of care for the

(Rule 1200-08-36-.07, continued)

residents and to minimize the impact of transition. The ACH shall assist each resident in locating an alternative placement.

Authority: *T.C.A. §§ 68-11-201, 68-11-202, 68-11-206, 68-11-209 and 68-11-270.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2010; effective April 28, 2011.*

1200-.08-36-.08 PERSONAL AND HEALTH CARE NEEDS.

(1) An ACH provider shall conduct an assessment of a prospective resident before admitting the resident. The assessment shall include:

(a) Diagnoses;

(b) Medications;

(c) Personal care needs;

(d) Nursing care needs;

(e) Nutritional needs;

(f) Activities; and

(g) Lifestyle preferences.

(2) An ACH provider shall be able to meet the needs of a resident, including personal and health care needs and night care needs, before admitting the resident.

(3) Plan of Care.

(a) The ACH shall develop a resident plan of care for the day-to-day delivery of residential services, including personal and health care needs and night care needs with input and participation from the resident or the resident's legal representative, the resident's family, and the resident's treating physician, or other licensed health care professionals or entity delivering patient services within five (5) days of admission. If the ACH services are reimbursed through the TennCare CHOICES program, or any successor thereto, the plan of care shall be developed in collaboration with the member's care coordinator.

(b) The plan of care shall include, at a minimum the following elements:

1. Health and functional status, including cognitive/behavioral health status and any ADL deficiencies;

2. Resident needs and preferences, personal and health care needs, and night care needs;

3. Significant health conditions and required course of treatment for management of chronic conditions;

4. Medication regimen;

5. Dietary needs; and

6. Evacuation plans.

(Rule 1200-08-36-.15, continued)

(q) To not be required to perform services for the ACH. The resident and licensee may mutually agree, in writing, that the resident may perform certain activities or services as part of the fee for his or her stay; and

(r) To execute, modify, or rescind a Living Will, Do-Not-Resuscitate Order or advance directive.

Authority: *T.C.A. § 68-11-209.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

1200-08-36-.16 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.

(1) Pursuant to this rule, each ACH shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or it may limit the power of the agent, and it may include individual instructions. An advance directive that makes no limitation on the agent's authority shall authorize the agent to make any health care decision the resident could have made while having capacity.

(3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the resident's estate upon his or her death. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.

(4) Unless otherwise specified in an advance directive, the agent's authority becomes effective only upon a determination that the resident lacks capacity, and it ceases to be effective upon a determination that the resident has recovered capacity.

(5) An ACH may use the model advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

(6) The resident's designated physician shall make a determination that a resident either lacks or has recovered capacity. The designated physician shall also have authority to make a determination that another condition exists that affects an individual instruction or the authority of an agent. To make such determinations the resident's designated physician shall be authorized to consult with such other persons as the physician may deem appropriate.

(7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.

(8) An advance directive may include the individual's nomination of a court-appointed guardian.

(Rule 1200-08-36-.16, continued)

(9) An ACH shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

(10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of T.C.A. § 32-11-101 et seq., and a durable power of attorney for health care complying with the terms of T.C.A. § 34-6-201 et seq., shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.

(12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates intent to revoke.

(14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.

(15) An advance directive that conflicts with a previously executed advance directive revokes the earlier directive to the extent of the conflict.

(16) Surrogates.

(a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing, either orally or in writing, the supervising health care provider.

(b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:

1. The designated physician determines that the resident lacks capacity, and

2. There is not an appointed agent or guardian; or

3. The agent or guardian is not reasonably available.

(c) In the case of a resident who lacks capacity, the resident's current clinical record of the ACH shall identify his or her surrogate.

(d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.

(e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:

1. The resident's spouse, unless legally separated;

2. The resident's adult child;

3. The resident's parent;

(Rule 1200-08-36-.16, continued)

4. The resident's adult sibling;

5. Any other adult relative of the resident; or

6. Any other adult who satisfies the requirements of Rule 1200-08-36-.15(16)(d).

(f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.

(g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the resident's known wishes or best interests;

2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;

3. The proposed surrogate's demonstrated care and concern;

4. The proposed surrogate's availability to visit the resident during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

(h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under Rules 1200-08-36-.15(16)(c) thru 1200-08-36-.15(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or

2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

(i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

(j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known.

(k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second

(Rule 1200-08-36-.16, continued)

independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

(l) Except as provided in Rule 1200-08-36-.15(16)(m):

1. A designated surrogate may not be one of the following:

(i) the treating health care provider;

(ii) an employee of the treating health care provider;

(iii) an operator of a health care institution; or

(iv) an employee of an operator of a health care institution; and

2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.

(m) A designated surrogate may be an employee of the treating health care provider or an employee of an operator of a health care institution if:

1. The employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. The other requirements of this section are satisfied.

(n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(17) Guardian.

(a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.

(b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

(18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record such a determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.

(19) Except as provided in Rules 1200-08-36-.15(20) thru 1200-08-36-.15(22), a health care provider or institution providing care to a resident shall:

(Rule 1200-08-36-.16, continued)

(a) Comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and

(b) Comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

(21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:

(a) Contrary to an institution's policy which is based on reasons of conscience, and

(b) The institution timely communicated the policy to the resident or to a person then authorized to make health care decisions for the resident.

(22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to Rules 1200-08-36-.15(20) thru 1200-08-36-.15(22) shall:

(a) Promptly inform the resident, if possible, and/or any other person then authorized to make health care decisions for the resident;

(b) Provide continuing care to the resident until he can be transferred to another health care provider or institution or it is determined that such a transfer is not possible;

(c) Immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision unless the resident or person then authorized to make health care decisions for the resident refuses assistance; and

(d) If a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.

(24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

(25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) Complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

(b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(Rule 1200-08-36-.16, continued)

(c) Complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.

(26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct if such identification is made in good faith.

(28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

(29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

~~(30) Universal Do Not Resuscitate Order (DNR).~~

~~(a) The Physicians Order for Scope of Treatment (POST) form, a form meeting the provisions of the Health Care Decisions Act and approved by the Board for Licensing Health Care Facilities, may be used as the universal do not resuscitate order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:~~

~~1. With the consent of the patient; or~~

~~2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or~~

~~3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available, the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.~~

~~(b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.~~

~~(c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.~~

~~(d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

(Rule 1200-08-36-.16, continued)

~~(e) When a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record. The POST form promulgated by the Board for Licensing Health Care Facilities shall serve as the universal do not resuscitate order when transferring a resident from one health care facility to another health care facility.~~

~~(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.~~

~~(g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then current law, shall remain valid and shall be given effect as provided.~~

(30) Physician Orders for Scope of Treatment (POST)

(a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

1. With the informed consent of the patient;

2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);

2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

3. Either:

(Rule 1200-08-36-.16, continued)

(i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or

(ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

4. Either:

(i) With the informed consent of the patient;

(ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.

(e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.

(Rule 1200-08-36-.16, continued)

(f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

Authority: *T.C.A §§68-11-209, 68-11-224 and 68-11-1801. et seq.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

1200-08-36-.17 DISASTER PREPAREDNESS.

(1) An ACH shall have in effect and available for all supervisory personnel and staff written copies of the following disaster, refuge and/or evacuation plans readily available at all times:

(a) Fire Safety Procedures Plan shall include:

1. Minor fires;
2. Major fires;
3. Fighting the fire;
4. Evacuation procedures; and
5. Staff functions.

(b) Tornado/Severe Weather Procedures Plan shall include:

1. Staff duties; and
2. Evacuation procedures.

(c) Bomb Threat Procedures Plan shall include:

1. Staff duties;
2. Search team, searching the premises;
3. Notification of authorities;

(Rule 1200-08-36-.17, continued)

(a) All generators shall be exercised for thirty (30) minutes each month under full load, including automatic and manual transfer of equipment.

(b) The emergency generator shall be operated at the existing connected load and not on dual power. The ACH shall maintain a monthly log and have trained staff familiar with the generator's operation.

Authority: *T.C.A. §§ 68-11-209.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

1200-08-36-.18 APPENDIX I.

~~(1) Physician Orders for Scope of Treatment (POST) Form~~

~~(This space intentionally left blank)~~

(1) Physician Orders for Scope of Treatment (POST) Form

(This space intentionally left blank)

(Rule 1200-08-36-.18, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	Patient's Last Name First Name/Middle Initial Date of Birth

Section A *Check One Box Only*	**CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and/or is not breathing.** ☐ **Resuscitate (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/ no CPR) (Allow Natural Death)** When not in cardiopulmonary arrest, follow orders in B, C, and D.
Section B *Check One Box Only*	**MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.** ☐ **Comfort Measures.** Treat with dignity and respect. Keep clean, warm, and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location.** ☐ **Limited Additional Interventions.** Includes care described above. Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation, advanced airway interventions, or mechanical ventilation. **Transfer to hospital if indicated. Avoid intensive care.** ☐ **Full Treatment.** Includes care above. Use intubation, advanced airway interventions mechanical ventilation, and cardioversion as indicated. **Transfer to hospital if indicated. Include intensive care.** *Other Instructions:* _____
Section C *Check One Box Only*	**ANTIBIOTICS – Treatment for new medical conditions:** ☐ **No Antibiotics** ☐ **Antibiotics** *Other Instructions:* _____
Section D *Check One Box Only in Each Column*	**MEDICALLY ADMINISTERED FLUIDS & NUTRITION.** Oral fluids & nutrition must be offered if medically feasible. ☐ **No IV fluids** (provide other measures to assure comfort) ☐ **No feeding tube** ☐ **IV fluids for a defined trial period** ☐ **Feeding tube for a defined trial period** ☐ **IV fluids long-term if indicated** ☐ **Feeding tube long-term** *Other Instructions:* _____
Section E *Must be Completed*	**Discussed with:** ☐ Patient/Resident ☐ Health care agent ☐ Court-appointed guardian ☐ Health care surrogate ☐ Parent of minor ☐ Other: _____ (Specify) **The Basis for These Orders Is:** (Must be completed) ☐ Patient's preferences ☐ Patient's best interest (patient lacks capacity or preferences unknown) ☐ Medical indications ☐ (Other) _____

Physician Name (Print)	Physician Signature (Mandatory) Date	Physician Phone Number

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. This form can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-36-.18, continued)

Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

POST must be signed by a physician to be valid. Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through E and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-36-.18, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED

Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")	Patient's Last Name
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, first follow these orders, then contact physician.	First Name/Middle Initial
	Date of Birth

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse and is not breathing.

☐ **Resuscitate(CPR)** ☐ **Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)**

When not in cardiopulmonary arrest, follow orders in **B, C, and D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS. Patient has pulse and/or is breathing.

☐ **Comfort Measures Only.** Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.**

☐ **Limited Additional Interventions.** In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). **Transfer** to hospital if indicated. Generally avoid the intensive care unit. **Treatment Plan: basic medical treatments.**

☐ **Full Treatment.** In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. **Transfer** to hospital and/or intensive care unit if indicated. **Treatment Plan: Full treatment including in the intensive care unit.**

Other Instructions: _____

Section C *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids & nutrition must be offered if feasible.

☐ No artificial nutrition by tube.
☐ Defined trial period of artificial nutrition by tube.
☐ Long-term artificial nutrition by tube.

Other Instructions: _____

Section D *Must be Completed*

Discussed with:
☐ Patient/Resident
☐ Health care agent
☐ Court-appointed guardian
☐ Health care surrogate
☐ Parent of minor
☐ Other: _____ (Specify)

The Basis for These Orders Is: (Must be completed)
☐ Patient's preferences
☐ Patient's best interest (patient lacks capacity or preferences unknown)
☐ Medical indications
☐ (Other) _____

Physician/NP/CNS/PA Name (Print)	**Physician/NP/CNS/PA Signature Date** NP/CNS/PA (Signature at Discharge)	**MD/NP/CNS/PA Phone Number:**

Signature of Patient, Parent of Minor, or Guardian/Health Care Representative

Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.

Name (print)	Signature	Relationship (write "self" if patient)

(Rule 1200-08-36-.18, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Directions for Health Care Professionals

Completing POST

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

Using POST

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

Reviewing POST

This POST should be reviewed if:

(1) The patient is transferred from one care setting or care level to another, or
(2) There is a substantial change in the patient's health status, or
(3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.

(Rule 1200-08-36-.18, continued)

(2) Advance Care Plan Form

ADVANCE CARE PLAN
(Tennessee)

I, _____, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

Agent: I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation:_____
Address: _____

Alternate Agent: If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: _____ Phone #: _____ Relation: _____
Address: _____

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

When Effective (mark one): ☐ I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself. ☐ I do not give such permission (this form applies only when I no longer have capacity).

Quality of Life: By marking "yes" below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking "**no**" below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

☐ Yes ☐ No	**Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
☐ Yes ☐ No	**Permanent Confusion:** I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
☐ Yes ☐ No	**Dependent in all Activities of Daily Living:** I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
☐ Yes ☐ No	**End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.

Treatment: If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked "no" above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking "yes" below, I have indicated treatment I want. By marking "**no**" below, I have indicated treatment I **do not want**.

(Rule 1200-08-36-.18, continued)

☐ Yes	☐ No	**CPR (Cardiopulmonary Resuscitation):** To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
☐ Yes	☐ No	**Life Support / Other Artificial Support:** Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
☐ Yes	☐ No	**Treatment of New Conditions:** Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
☐ Yes	☐ No	**Tube feeding/IV fluids:** Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.

Please sign on page 2

(Rule 1200-08-36-.18, continued)
Other instructions, such as burial arrangements, hospice care, etc.: _____

_____

_____

_____

_____

_____

(Attach additional pages if necessary)

Organ donation: Upon my death, I wish to make the following anatomical gift (mark one):

☐ Any organ/tissue ☐ My entire body ☐ Only the following organs/tissues: _____

_____

_____

_____

☐ No organ/tissue donation.

SIGNATURE

Your signature must **either** be witnessed by two competent adults **or** notarized. If witnessed, neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Signature: _____ Date: _____
(Patient)

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

_____
Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

_____
Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF TENNESSEE
COUNTY OF _____

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: _____

_____
Signature of Notary Public

(Rule 1200-08-36-.18, continued)

WHAT TO DO WITH THIS ADVANCE DIRECTIVE

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.*
Administrative History: *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011. Repeal and new rule filed August 28, 2012; effective November 26, 2012.*

* 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)
Carissa S. Lynch, Pharm.D.	X				
Michael R. Miller	X				
Janice M. Hill, RN	X				
Robert Gordon	X				
John A. Marshall	X				
Jennifer Gordon-Maloney, DDS	X				
Roy King, M.D.				X	
Sherry Robbins, M.D.	X				
Annette Marlar	X				
Robert C. Breeden	X				
Sylvia J. Burton	X				
Betsy Cummins	X				
David Rhodes				X	
Joshua A. Crisp	X				
Betty S. Hodge				X	
Bobby Wood	X				
Larry Arnold, M.D., Chairman				X	
Jim Shulman, Executive Director Commission on Aging and Disability	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 09/10/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *05/23/2014 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/10/14 (mm/dd/yy)*

Date: 3/19/15

Signature: Kyonzte Hughes-Toombs

Name of Officer: Kyonzte Hughes-Toombs

Title of Officer: Assistant General Counsel Department of Health

Subscribed and sworn to before me on: 3-19-15

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Department of Health, Division of Health Care Facilities Rules
Chapters 1200-08-01, 1200-08-02, 1200-08-06, 1200-08-10, 1200-08-11, 1200-08-15, 1200-08-24, 1200-08-25, 1200-08-26, 1200-08-27, 1200-08-28, 1200-08-29, 1200-08-30, 1200-08-32, 1200-08-34, 1200-08-35, and 1200-08-36
Standards for Health Care Facilities

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter
3/25/2015
Date

Department of State Use Only

Filed with the Department of State on: 3/27/15
Effective on: 6/25/15

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:** Wildlife Resources Agency

DIVISION: Director's Office

SUBJECT: License and Permit Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-1-206

EFFECTIVE DATES: June 25, 2015, through June 30, 2016

FISCAL IMPACT: The Agency reports that the promulgation of this rule is projected to generate approximately $5.9 million in additional revenue for the Wildlife Fund. This projection is based on the number of licenses and permits sold last year and an estimate of the number of newly created permits the Agency will sell. The additional revenue will not be fully realized until license year 2016-2017, because licenses for 2015-2016 will go on sale March 1st at the current prices.

STAFF RULE ABSTRACT: This rule creates new fees and adjusts existing fees for hunting and fishing licenses and permits. The Tennessee Fish and Wildlife Commission has the authority to create new licenses and permits and adjust existing fees pursuant to Tennessee Code Annotated, Section 70-1-206. The Commission's authority to adjust existing fees and create new fees is limited by the increase in total revenue generated by the proposed changes. The total revenue increase generated by a proposed license package cannot exceed the percentage increase in the consumer price index since license and permit prices were last adjusted. At the time of filing this rule, the percentage increase in CPI, since 2005 when prices were last adjusted, was approximately 22%.

In addition to the adjustment of existing fees, this rule restructures fees associated with Agency firing ranges and wildlife management area user permits and creates new fees for hunting and fishing guides. The rule also abolishes the nonresident one-day fishing license and creates new licenses for Tennessee senior citizens.

The projected increase in total revenue generated by this rule is approximately 18.6%.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-01-28

New	X
Amendment	X
Repeal	

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public 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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The Agency does not anticipate significant impact to small businesses in Tennessee.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

The Agency anticipates no change in reporting, recordkeeping, or other administrative costs to incorporate the proposed rule change into the existing the TWRA system.

(3) A statement of the probable effect on impacted small businesses and consumers;

The Agency does not anticipate significant impact to small businesses in Tennessee.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The Agency is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Agency is not aware of any federal or state counterparts to this rule.

(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 Agency does not anticipate significant impact to small businesses in Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments,” (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

Will passage of this rule have a projected financial impact on local governments?

No

Please describe the increase in expenditures or decrease in revenues:

10

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Nashville, TN 37243
Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 03-19-15
Rule ID(s): 5898
File Date: 3/27/15
Effective Date: 6/25/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Director's Office
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

X Amendment
X New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1660-01-28	Rules And Regulations Governing License And Permit Fees
Rule Number	**Rule Title**
1660-01-28-.01	Basic Resident Licenses and Fees
1660-01-28-.02	Non-Resident Licenses and Fees
1660-01-28-.03	Wildlife Management Area & Designated Area Permits and Fees
1660-01-28-.04	Miscellaneous Licenses, Permits and Fees
1660-01-28-.07	Permits and Fees for Tier One Hunter Education Centers and Public Firing Ranges
1660-01-28-.08	Permits and Fees for Tier Two Hunter Education Centers and Public Firing Ranges
1660-01-28-.09	Permits and Fees for Tier Three Hunter Education Centers and Public Firing Ranges
1660-01-28-.10	Licenses for Hunting, Trapping, and Fishing Guide Services

Amendment

1660-01-28-.01, Basic Resident Licenses and Fees, is hereby amended by deleting paragraph (1) in its entirety and replacing it with the following:

(1) Licenses and fees are set out as follows:

Type:	Description:		
01	Resident Combination Hunting and Fishing License	~~$27.00~~	$33.00
02	Resident Junior Hunting, Fishing and Trapping License	~~$7.00~~	$9.00
04	Sportsman License	~~$135.00~~	$165.00
05	Resident Waterfowl License - Supplemental	~~$30.00~~	$37.00
09	Resident Big Game Gun License - Supplemental	~~$27.00~~	$33.00
10	Resident Big Game Archery License - Supplemental	~~$27.00~~	$33.00
11	Resident Big Game Muzzleloader License - Supplemental	~~$27.00~~	$33.00
~~15~~	~~Resident Elk License~~	~~$27.00~~	
19	Resident Trapping License	~~$27.00~~	$33.00
20	Resident County of Residence Fishing License- Except Trout	~~$8.00~~	$10.00
21	Resident 1-Day Fishing License- Except Trout	~~$5.00~~	$6.00
22	Resident Trout License - Supplemental	~~$17.00~~	$21.00
23	Resident 1-day Fishing License- All Species	~~$10.50~~	$11.00
63	Resident South Holston Reservoir License- Supplemental	~~$20.00~~	$20.00

No resident of Tennessee shall be required to possess any of the licenses listed above when hunting on the 4th Saturday in August, known as free hunting day. Hunting is limited to those species on which there is an open season as proclaimed by the ~~Tennessee Wildlife Resources Commission~~ Tennessee Fish & Wildlife Commission.

Authority: T.C.A. §70-1-206, §70-2-201, and §70-2-219. Administrative History: Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed July 24, 2006; effective October 7, 2006. Amendment filed January 4, 2008; effective March 19, 2008. Amendment filed June 28, 2010; effective September 26, 2010.

Amendment

1660-01-28-.02, Non-Resident Licenses and Fees, is hereby amended by deleting paragraph (1) in its entirety and replacing it with the following:

(1) Licenses and fees are set out as follows:

Type:	Description:		
70	Non-Resident Junior Hunting & Fishing License	~~$8.00~~	$10.00
71	Non-Resident Small Game & Waterfowl Hunting License	~~$90.00~~	$110.00
72	Non-Resident 7 Day Small Game & Waterfowl Hunting License	~~$50.00~~	$61.00
73	Non-Resident All Game Hunting License	~~$250.00~~	$305.00
74	Non-Resident 7-Day All Game Hunting License	~~$175.00~~	$214.00
~~75~~	~~Nonresident Elk License~~	~~$300.00~~	
76	Non-Resident Fishing License - Except Trout	~~$40.00~~	$49.00
77	Non-Resident 3-Day Fishing License - Except Trout	~~$16.00~~	$20.00
78	Non-Resident 3-Day Fishing License - All Species	~~$33.00~~	$40.00
79	Non-Resident 10 Day Fishing License - Except Trout	~~$25.00~~	$30.00
80	Non-Resident 10 Day Fishing License - All Species	~~$50.00~~	$61.00
81	Non-Resident Fishing License - All Species	~~$80.00~~	$98.00
~~82~~	~~Non-Resident 1-Day Fishing License- Except Trout~~	~~$7.50~~	
~~83~~	~~Non-Resident 1-Day Fishing License- All Species~~	~~$15.50~~	
85	Non-Resident 7-Day Junior All Game Hunting License	~~$24.50~~	$26.00
86	Non-Resident Junior All Game Hunting License	~~$39.00~~	$41.00

Authority: T.C.A. §70-1-206 §70-2-219, §70-2-202. Administrative History: Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed January 4, 2008; effective March 19, 2008. Amendment filed June 28, 2010; effective September 26, 2010.

Amendment

1660-01-28-.03, Wildlife Management Area & Designated Area Permits and Fees, is hereby amended by deleting paragraph (1) in its entirety and replacing it with the following:

(1) Permits and fees are set out as follows:

Type:	Description:	
25	Reelfoot Waterfowl Blind Permit*	~~$50.00~~ $61.00
35	Resident Annual High Impact Habitat Conservation Permit	~~$60.00~~ $73.00
36	Resident Daily High Impact Habitat Conservation Permit	~~$12.00~~ $15.00
37	Non-Resident Annual High Impact Habitat Conservation Permit	~~$190.00~~ $232.00
38	Non-Resident Daily High Impact Habitat Conservation Permit	~~$30.00~~ $37.00
65	Resident/Non-Resident Bedford Lake 1 Day Fishing Permit	~~$5.00~~ $6.00
87	Big Game Management Permit*	$24.00
88	Reelfoot Preservation Permit, 3-Days**	$10.00
89	Reelfoot Preservation Permit, Annual**	$16.00
90	Reelfoot Preservation Permit, 1-Day**	$3.00
91	Designated Area - Combination Waterfowl and Small Game Permit*	~~$50.00~~ $61.00
92	Designated Area - Combination Waterfowl and Small Game Permit, 1-Day*	~~$10.00~~ $12.00
93	Designated Area - Small Game Permit – Except Waterfowl – Annual*	~~$16.00~~ $20.00
94	WMA Big Game Permit – Annual*	~~$20.00~~ $24.00
95	Cherokee WMA Big Game Permit, Non-Quota*	~~$15.00~~ $18.00
96	3-Day Gatlinburg Trout Permit	$9.00
97	Resident or Non-Resident 1-Day Gatlinburg Trout License	$11.00
98	Tellico/Citico Trout Permit, 1-Day	~~$5.00~~ $6.00
99	1-Day Gatlinburg Trout Permit	$3.00
	Quota Hunt Application Fee	~~$10.00~~ $12.00
	Field Trials – WMA (Per Trial)*	~~$50.00~~ $75.00

* Supplemental
** Supplemental if hunting, fishing or trapping.

No resident of Tennessee shall be required to possess any of the permits listed above when hunting on the 4th Saturday in August, known as free hunting day. Hunting is limited to those species on which there is an open season as proclaimed by the ~~Tennessee Wildlife Resources Commission~~ Tennessee Fish & Wildlife Commission.

Authority: T.C.A. §70-1-206, §70-2-219, and §70-2-225. Administrative History: Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed July 24, 2006; effective October 7, 2006. Amendment filed January 22, 2007; effective April 7, 2007. Amendment filed June 28, 2010; effective September 26, 2010. Amendment filed November 17, 2010; effective February 15, 2011.

Amendment

1660-01-28-.04, Miscellaneous Licenses, Permits and Fees, is hereby amended by deleting paragraph (1) in its entirety and replacing it with the following:

(1) Licenses, permits and fees are set out as follows:

Type:	Description:	
06	Migratory Bird Permit (Harvest Inventory Permit)	$1.00
07	Facility Fishing License	no cost
12	Apprentice Hunter Education Permit	~~$10.00~~ $11.00
13	Hunter Education Field Day Exemption Fee (21 and over)	$11.00
100	Resident Senior Commercial Fisher License	no cost
101	Resident Commercial Fisher License	~~$200.00~~ $244.00
102	Commercial Helper License - Fishing	~~$200.00~~ $244.00
103	Non-Resident Commercial Fisher License	~~$1,000.00~~ $1,220.00
105	Resident Commercial Musseler License	~~$200.00~~ $244.00
106	Resident/Non-Resident Commercial Turtle Permit – Supplemental	no cost
107	Non-Resident Commercial Musseler License	~~$1,000.00~~ $1,220.00
108	Resident Commercial Roe Fish Permit – Supplemental...	~~$1,000.00~~ $1,220.00
109	Cultured Pearl License	~~$1,000.00~~ $1,220.00
110	Non-Resident Commercial Roe Fish Permit, Supplemental	~~$1,500.00~~ $1,830.00
111	Resident Wholesale Roe Fish Permit	~~$500.00~~ $610.00
112	Non-Resident Wholesale Roe Fish Dealer	~~$1,000.00~~ $1,220.00
113	Wholesale Fish Dealer's License	~~$500.00~~ $610.00
115	Wholesale Mussel Dealer's License	~~$500.00~~ $610.00
116	Non-Resident Fish Dealer's License	~~$500.00~~ $610.00
117	Falconry General Permit – Supplemental	~~$60.00~~ $73.00
118	Resident Fish Dealer's License	~~$50.00~~ $62.00
119	Resident/Non-Resident Commercial Bow License - Fishing	no cost
120	Non-Resident Trapping License	~~$400.00~~ $200.00
121	Resident/Non-resident Fur Buyer License	~~$150.00~~ $183.00
122	Falconry Apprentice Permit – Supplemental	~~$60.00~~ $73.00
123	Falconry Master Permit – Supplemental	~~$60.00~~ $73.00
124	Commercial Wildlife Preserve - Big Game Permit	~~$300.00~~ $366.00
125	Commercial Wildlife Preserve - Small Game Permit	~~$150.00~~ $183.00
141	Taxidermist Permit	~~$100.00~~ $122.00
149	Animal Importation Permit, One Shipment	~~$25.00~~ $31.00
150	Animal Importation Permit, Annual	~~$200.00~~ $244.00
160	Permanent Exhibitor Permit	~~$1,000.00~~ $1,220.00
161	Temporary Exhibitor Permit	~~$250.00~~ $305.00
164	Resident Annual Senior Citizen Combination Hunting & Fishing License	$4.00
~~166~~	~~Resident Senior Citizen's Permanent License~~ Resident Permanent Senior Citizen Combination Hunting & Fishing License	~~$10.00~~ $49.00
167	~~Annual Senior Citizen's Permit - Supplemental~~ Resident Annual Senior Citizen Sportsman License	~~$40.00~~ $49.00
168***	Resident Annual Sport Combination Hunting and Fishing License – Certified Physically or Mentally Disabled (under 18)	$5.00
169****	Resident Permanent Sport Combination Hunting and Fishing License – Certified Intellectually Disabled	$10.00
170	Personal Possess Permit, Class I, One Animal,	~~$150.00~~ $183.00
171	Personal Possess Permit, Class I, Entire Facility,	~~$1,500.00~~ $1,830.00
172	Personal Possession Permit, Class II, One Animal	~~$25.00~~ $31.00
173	Personal Possession Permit, Class II, Entire Facility.	~~$250.00~~ $305.00
174	Propagation Facility Permit, Small Game/Waterfowl	~~$50.00~~ $61.00
175	Propagation Facility Permit, Class II, Except Small Game/Waterfowl	~~$250.00~~ $305.00
176	Propagation Facility Permit, Class I	~~$2,500.00~~ $3,050.00
189	Resident Permanent Sport Combination Hunting and Fishing License - Permanent Wheelchair Restricted	$10.00
190	Slat Basket Tag Permit	~~$8.00~~ $10.00
191	Daily TWRA Lake Fishing Permit	~~$5.00~~ $6.00

192	TWRA Lake Boat Rental Permit	~~$8.00~~ $10.00
193	Annual TWRA Lake Fishing Permit	~~$40.00~~ $48.00
194	Replacement License or Permit – Cost for replacement of one license or permit in a single transaction	~~$6.00~~ $7.00
195	Replacement License or Permit $1.00 – Cost for replacement of each additional license or permit in a single Type 194 transaction	$1.00
197	Resident Permanent Sport Fishing License - Certified Blind	$10.00
198	Resident Permanent Sport Combination Hunting and Fishing License (Sport Fishing and Hunting License) - Disabled Veterans	$10.00
199	Resident Permanent Sport Fishing License – Persons Drawing Social Security Benefits Due to Mental Retardation	$10.00
500	Hunter Education Replacement Card	~~$6.00~~ $7.00

***Pursuant to T.C.A. §70-2-104(e)(4), it shall be denoted on the license that the hunter is disabled.
**** Pursuant to 2012 Public Chapter 713, it shall be denoted on the license that the hunter is intellectually disabled.

Authority: T.C.A. §70-1-206, §70-2-205, §70-2-208, §70-2-215, §70-2-219, §70-2-220, and §70-2-221. Administrative History: Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed July 29, 2005; effective October 12, 2005. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed February 26, 2007; effective May 12, 2007. Amendments filed October 5, 2012; effective January 3, 2013. The Government Operations Committee filed a 29-day stay of the effective date of these rules; new effective date February 1, 2012. Amendment filed November 7, 2012; effective February 5, 2013.

New Rule

1660-01-28-.07, Permits and Fees for Tier One Hunter Education Centers and Public Firing Ranges, shall read:

(1) Permits and Fees for Tier One Ranges:

Tier One Ranges shall include: Cheatham WMA, Catoosa WMA, Prentice Cooper WMA, North Cumberland WMA, Chuck Swan WMA, and Yanahli WMA firing ranges.

(a) Permit Fees:

1. Adult (16 years of age and older) - $5.00 per 2 hours.

2. Adult Annual Permit (16 years of age and older) - $100.00.

3. Classroom Permit - $50.00 per hour or $150 per day (up to 8 hours.)

4. Surcharge of $61.00 for after-hour use of facilities in addition to regular rates.

Authority: T.C.A. §§70-1-206 and §70-2-224. Administrative History: Original rule filed _____; effective _____.

New Rule

1660-01-28-.08, Permits and Fees for Tier Two Hunter Education Centers and Public Firing Ranges, shall read:

(1) Permits and Fees for Tier Two Ranges:

Tier Two Ranges shall include: Stones River Hunter Education Center and Firing Range and John Sevier Hunter Education Center and Firing Range.

(a) Permit Fees:

1. Adult (16 years of age and older) - $7.50 per 2 hours.

2. Adult Annual Permit (16 years of age and older) - $150.00.

3. Classroom Permit - $50.00 per hour or $150 per day (up to 8 hours.)

4. Surcharge of $61.00 for after-hour use of facilities in addition to regular rates.

Authority: T.C.A. §§70-1-206 and §70-2-224. Administrative History: Original rule filed _____; effective _____.

New Rule

1660-01-28-.09, Permits and Fees for Tier Three Hunter Education Centers and Public Firing Ranges, shall read:

(1) Permits and Fees for Tier Three Ranges:

Tier Three Ranges shall include Tennessee Wildlife Resources Agency Hunter Education Center and Firing Range (Bartlett).

(a) Permit Fees:

1. Adult (16 years of age and older) - $9.50 per hour.

2. Adult Annual Permit (16 years of age and older) - $300.00.

3. Classroom Permit - $50.00 per hour or $150 per day (up to 8 hours.)

4. Surcharge of $61.00 for after-hour use of facilities in addition to regular rates.

Authority: T.C.A. §§70-1-206 and §70-2-224. Administrative History: Original rule filed _____; effective _____.

New Rule

1660-01-28-.10, Licenses for Hunting, Trapping, and Fishing Guide Services, shall read:

(1) Licenses are set out as follows:

Type:	Description:	
450	Resident Guide License	$150.00
455	Non-Resident Guide License	$650.00

A guide is any individual who accepts compensation for providing assistance to another in any act of hunting, fishing and/or trapping and shall be required to possess a guide license.

Entities employing individuals as guides may purchase such resident and non-resident guide licenses as may be necessary for its employees.

Authority: T. C. A. §70-1-206. Administrative History: Original rule filed _____; effective _____.

* 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
Jeff McMillin	✓			
Chad Baker				✓
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeffrey H. Griggs	✓			
Connie King	✓			
Tom Rice				✓
Jim Ripley	✓			
James Stroud				✓
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 01/16/2015 (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: 11/21/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 01/16/2015

Date: 2/25/15

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 2-25-15

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

March 18, 2015

Date

Department of State Use Only

Filed with the Department of State on: 3/27/15

Effective on: 6/25/15

Tre Hargett
Secretary of State

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