

## G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Air Pollution Control Board
<u>SUBJECT:</u>	Definitions, Organic Compounds Exempt from Regulation
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 68-201-105(a)(1)
<u>EFFECTIVE DATES:</u>	June 30, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The rules add the following eight organic compounds to definitions that exempt listed compounds from regulation related to tropospheric ozone (smog) formation: Trans 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice<sup>TM</sup>1233zd(E)); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); four hydrofluoropolyethers (HFPEs) which are identified as HCF20CF2H (HFE-134); HCF20CF20CF2H (HFE-236cal2); HCF20CF2CF20CF2H (HFE-338pcc13); HCF20CF20CF2CF20CF2H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans-1,3,3,3-tetrafluoropropene (also known as HF0-1234ze); and 2,3,3,3-tetrafluoropropene. The rules also move the amended definitions into the chapter dedicated to definitions so that they will be easier to locate. According to the Board, the federal government has determined that the eight organic compounds make a negligible contribution to smog formation and that regulatory efforts related to reducing smog formation should be focused on other organic compounds.</p>

## Public Hearing Comments

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

Comment: EPA pointed out a few typographical errors.

Response: The typographical errors that were mentioned have been corrected.

Comment: The appearance of extra chemicals that are not listed in 40 CFR 51.100

Response: The chemical trans-1,3,3,3-tetrafluoropropene (HFO-1234ze) can be found in 78 FR 9828 February 12, 2013. The chemicals propylene carbonate and dimethyl carbonate are listed in the definition of VOC as of March 31, 2009, at EPA - TTN NAAQS - Ozone Implementation - Technical Resources Definition of VOC 1-3 and also, at [www.epa.gov/ttn/naaqs/ozone/ozonetech/def\\_voc.htm](http://www.epa.gov/ttn/naaqs/ozone/ozonetech/def_voc.htm).

Comment: Please remove the trademark name of Solstice TM 1233 zd(E) as it was not listed in 40 CFR 51.100.

Response: The Division has removed the trademark name.

Comment: EPA pointed out that 2,3,3,3-tetrafluoropropene was missing from state's proposed definition although it is listed in 40 CFR 51.100 and recommends it be added.

Response: The Division intended to include the chemical 2,3,3,3-tetrafluoropropene in the definition and has added it in response to this comment.

Comment: The Sierra Club supports the aims of these proposed amendments to the regulations since it makes them easier and a lot better to use.

Response: The Division agrees.

Comment: As part of section 507 of the Clean Air Act a commenter is tasked with reviewing and commenting on rule changes and how they may affect small businesses. The commenter supports this change as consolidation of the definition will make it easier for companies to locate rule changes and understand the rules.

Response: The Division agrees.

## Regulatory Flexibility Addendum

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

The proposed rule amendments to Chapters 1200-03-02, 1200-03-09, 1200-03-11, and 1200-03-18 add eight organic compounds to definitions that exempt listed compounds from regulation related to tropospheric ozone (smog) formation. The proposed rule amendments also move the amended definitions into the chapter dedicated to definitions so that they will be easier to locate. The federal government has determined that the eight organic compounds make a negligible contribution to smog formation and that regulatory efforts related to reducing smog formation should be focused on other organic compounds. The compounds added are: Trans 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice<sup>TM</sup>1233zd(E)); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); four hydrofluoropolyethers (HFPEs) which are identified as HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze); and 2,3,3,3-tetrafluoropropene.

- (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 number of small businesses that would directly benefit from the proposed rules is unknown. These organic compounds are used in a variety of applications used by diverse industries including automotive manufacturing and telecommunications. Manufacturers of products composed of these compounds and users of the products would benefit. HFE-7300 and the four hydrofluoropoly ethers can be used for heat transfer and fire suppression. 2,3,3,3-tetrafluoropropene is used in motor vehicle air conditioning. Trans 1-chloro-3,3,3-trifluoroprop-1-ene is used by manufacturers of refrigeration equipment, water heaters and waste heat recovery equipment and is used as a blowing agent for insulating foams. Trans-1,3,3,3-tetrafluoropropene is used in refrigerants, aerosol propellants and as a blowing agent for insulated foams. It is most likely that small businesses would be purchasing the products composed of these compounds.

- (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.

Reporting, recordkeeping and other administrative costs associated with the use of these organic compounds would decrease.

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

The effect on impacted small businesses and consumers will be positive because regulatory compliance costs will be reduced and regulatory efforts will be focused appropriately.

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

The proposed rules are consistent with federal regulations concerning these compounds found in 40 CFR Part 51.

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

The rules are being amended so that they will be consistent with the federal rules.

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

Exemption of small businesses from the requirement of the proposed rule would eliminate any potential benefit that could be experienced by 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 Department anticipates that this amended rule will not have a financial impact on local governments.

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# 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*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-03-02	Definitions
Rule Number	Rule Title
1200-03-02-.01	General Definitions

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits

Chapter Number	Chapter Title
1200-03-11	Hazardous Air Contaminants
Rule Number	Rule Title
1200-03-11-.01	General Provisions

Chapter Number	Chapter Title
1200-03-18	Volatile Organic Compounds
Rule Number	Rule Title
1200-03-18-.01	Definitions

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

## Amendments

### Chapter 1200-03-02

#### Definitions

Rule 1200-03-02-.01 General Definitions is amended by deleting the introductory text to paragraph (1) and substituting instead the following:

- (1) ~~When used in Rule Division 1200-03, The following terms shall, unless the context clearly indicates otherwise, have the following meaning:~~

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting subparagraph (III) in its entirety and substituting instead the following:

- (III) ~~Reserved~~ “Exempt compounds” means any of the following compounds:

1. Carbon monoxide; carbon dioxide; carbonic acid; metallic carbides and carbonates; ammonium carbonate; propylene carbonate; dimethyl carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane(HFC-143a);1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. The following compound(s) are not exempt for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are exempt for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting subparagraph (mmm) in its entirety and substituting instead the following:

(mmm) Reserved "Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. VOC includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.
3. As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly-reactive compounds in the source's emissions.
4. For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.
5. The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

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

Chapter 1200-03-09  
Construction and Operating Permits

Amendments

Subparagraph (b) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting part 29 in its entirety and substituting instead the following:

29. ~~Reserved "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.~~
  - (i) ~~This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1 trichloroethane (methyl chloroform); 1,1,2 trichloro 1,2,2 trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2 dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1 trifluoro 2,2 dichloroethane (HCFC-123); 1,1,1,2 tetrafluoroethane (HFC-134a); 1,1 dichloro 1 fluoroethane (HCFC-141b); 1 chloro 1,1 difluoroethane (HCFC-142b); 2 chloro 1,1,1,2 tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2 tetrafluoroethane (HFC-134); 1,1,1 trifluoroethane (HFC-143a); 1,1 difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3 dichloro 1,1,1,2,2 pentafluoropropane (HCFC-225ca); 1,3 dichloro 1,1,2,2,3 pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5 decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3 hexafluoropropane (HFC-236fa); 1,1,2,2,3 pentafluoropropane (HFC-245ca); 1,1,2,3,3 pentafluoropropane (HFC-245ea); 1,1,1,2,3 pentafluoropropane (HFC-245eb); 1,1,1,3,3 pentafluoropropane (HFC-245fa); 1,1,1,2,3,3 hexafluoropropane (HFC-236ea); 1,1,1,3,3 pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro 1 fluoroethane (HCFC-151a); 1,2 dichloro 1,1,2 trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4 nonafluoro-4 methoxy butane (C4F9OCH3); 2 (difluoromethoxymethyl)-1,1,1,2,3,3,3 heptafluoropropane ((CF3)2CFCF2OCH3); 1 ethoxy-~~

~~1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>O<sub>2</sub>H<sub>5</sub>); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)-hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); methyl formate (HCOOCH<sub>3</sub>); propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:~~

- ~~(I) Cyclic, branched, or linear, completely fluorinated alkanes;~~
  - ~~(II) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;~~
  - ~~(III) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and~~
  - ~~(IV) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~
- ~~(ii) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibility-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.~~
  - ~~(iii) As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly reactive compounds in the source's emissions.~~
  - ~~(iv) For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.~~
  - ~~(v) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.~~

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

Chapter 1200-03-11  
Hazardous Air Contaminants

Amendments

Paragraph (3) of Rule 1200-03-11-.01 General Provisions is amended by deleting subparagraph (s) in its entirety and substituting instead the following:

- (s) Reserved "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
  - 1. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-

1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mf); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCH2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCH2OC2H5); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C3F7OCH3, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); methyl formate (HCOOCH3); propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:

- (i) — Cyclic, branched, or linear, completely fluorinated alkanes;
- (ii) — Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (iii) — Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (iv) — Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. — For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.
3. — As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly reactive compounds in the source's emissions.
4. — For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.
5. — The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

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

## Volatile Organic Compounds

### Amendments

Rule 1200-03-18-.01 Definitions is amended by deleting paragraph (26) in its entirety and substituting instead the following:

(26) ~~Reserved "Exempt compounds" means any of the following compounds:~~

- (a) ~~Carbon monoxide; carbon dioxide; carbonic acid; metallic carbides and carbonates; ammonium carbonate; propylene carbonate, dimethyl carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CF2OC2H5); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CF2OC2H5); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C3F7OCH3, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); and methyl formate (HCOOCH3)~~
- (b) ~~Perfluorocarbon compounds which fall into these classes:~~
- ~~1. Cyclic, branched, or linear, completely fluorinated alkanes~~
  - ~~2. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;~~
  - ~~3. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and~~
  - ~~4. Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~
- (c) ~~The following compound(s) are not exempt for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are exempt for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.~~

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

Rule 1200-03-18-.01 Definitions is amended by deleting paragraph (88) in its entirety and substituting instead the following:

(88) ~~Reserved "Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.~~

- (a) — This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCH2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCH2OC2H5); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C3F7OCH3, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); methyl formate (HCOOCH3); propylene carbonate, dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:
1. — Cyclic, branched, or linear, completely fluorinated alkanes;
  2. — Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  3. — Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  4. — Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (b) — For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.
- (c) — As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly reactive compounds in the source's emissions.
- (d) — For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.
- (e) — The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey				✓	
Thomas Beehan	✓				Thomas J. Beehan
John Benitez				✓	
Elaine Boyd	✓				Elaine Boyd
Karen Cisler	✓				Karen Cisler
Wayne T. Davis				✓	
Stephen Gossett	✓				Stephen Gossett
Shawn A. Hawkins				✓	
Helen Hennon				✓	
Richard Holland	✓				Richard Holland
John Roberts	✓				John A. Roberts
Larry Waters	✓				Larry Waters
Jimmy West	✓				Jimmy West
Alicia Wilson	✓				Alicia Wilson

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 05/14/2014, 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: 01/17/14

Rulemaking Hearing(s) Conducted on: (add more dates). 03/18/14

Date: 5/16/14

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 5/16/2014

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

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

*Herbert H. Slatery III*

Herbert H. Slatery III  
Attorney General and Reporter

4/1/2015

Date

**Department of State Use Only**

Filed with the Department of State on: 4/1/2015

Effective on: 6/30/2015

*Tre Hargett*

Tre Hargett  
Secretary of State

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

**BOARD:** Air Pollution Control Board

**SUBJECT:** Definitions

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 68-201-105

**EFFECTIVE DATES:** July 26, 2015 through June 30, 2016

**FISCAL IMPACT:** None

**STAFF RULE ABSTRACT:** Consistent with a change made in the federal regulations, the rule adds the compound 2-amino-2-methyl-1-propanol (AMP) to the definitions of “exempt compounds” and “volatile organic compounds” as an exempt compound on the basis that this compound has a negligible contribution to tropospheric ozone formation.

## 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.

Commentor: Mr. David Darling, P.E., Director, Environmental Affairs, American Coatings Association

Comment: The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents approximately 350 paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals.

ACA requests the Tennessee Air Pollution Control Board exempt AMP as Volatile Organic Compounds. On June 25, 2014, EPA added AMP to the list of compounds which are excluded from the definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

If exempted, there may be an incentive for industry to use these negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. As such, ACA requests exempting this compound as a VOC.

Response: Mr. Darling, thank you for your comments and letting the Division know that the American Coating Association supports the Division in exempting AMP as a Volatile Organic Compound. The Division will be recommending to the Board to exempt AMP as a VOC.

### **Regulatory Flexibility Addendum**

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

The Department is proposing to amend the regulatory definitions of exempt compounds and volatile organic compounds (VOCs) by adding 2-amino-2-methyl-1-propanol (also known as AMP, CAS number 124-68-5) to the list of compounds on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

- (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.

Approximately 350 paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals represented by the American Coating Association would have an incentive to use AMP as an exempt compound. The coatings industry is under constant pressure to reformulate products to lower and lower VOC content. As a result, there is a critical and urgent need for safe, effective and affordable exempt solvents and coating formulators need all available tools to formulate both lower VOC and reactivity coatings. AMP could prove useful for coating formulations.

- (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.

With the passage of this rule amendment, it will decrease the reporting, recordkeeping and other administrative costs associated with the aforementioned chemicals.

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

The probable effect on small businesses and consumers should be negligible, that is why the chemical is being listed as a compound that has a negligible contribution to tropospheric ozone formation.

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

None.

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

The Division regulations are being amended so that they will be consistent with the federal rules.

- (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.

Does not apply.

### **Impact on Local Governments**

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

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

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**For Department of State Use Only**

Sequence Number: 04-24-15  
Rule ID(s): 5937  
File Date: 04-27-15  
Effective Date: 07-26-15

## 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).*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Malcolm H. Butler
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0600
<b>Email:</b>	<a href="mailto:malcolm.butler@tn.gov">malcolm.butler@tn.gov</a>

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-03-02	Definitions
Rule Number	Rule Title
1200-03-02-.01	General Definitions

(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 1200-03-02

### Definitions

#### Amendments

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting subparagraph (III) in its entirety and substituting instead the following:

(III) "Exempt compounds" means any of the following compounds:

1. Carbon monoxide; carbon dioxide; carbonic acid; metallic carbides and carbonates; ammonium carbonate; propylene carbonate; dimethyl carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-111); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); *trans*-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethyl fluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol (AMP); and perfluorocarbon compounds which fall into these classes:
  - (i) Cyclic, branched, or linear, completely fluorinated alkanes;
  - (ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
2. The following compound(s) are not exempt for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to

VOC and shall be uniquely identified in emission reports, but are exempt for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting subparagraph (mmm) in its entirety and substituting instead the following:

(mmm) "Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $C_4F_9OCH_3$  or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCF_2OCH_3$ ); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $C_4F_9OC_2H_5$  or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCF_2OC_2H_5$ ); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n-C_3F_7OCH_3$ , HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ( $HCOOCH_3$ ); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; trans-1,3,3,3-tetrafluoropropene;  $HCF_2OCF_2H$  (HFE-134);  $HCF_2OCF_2OCF_2H$  (HFE-236ca2);  $HCF_2OCF_2CF_2OCF_2H$  (HFE-338pcc13);  $HCF_2OCF_2OCF_2CF_2OCF_2H$  (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol (AMP); and perfluorocarbon compounds which fall into these classes:
  - (i) Cyclic, branched, or linear, completely fluorinated alkanes;
  - (ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
2. For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.

3. As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly-reactive compounds in the source's emissions.
4. For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.
5. The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

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

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

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Vacant</b> Working in Municipal Government					
<b>Dr. John Benitez</b> Licensed Physician with experience in health effects of air pollutants	X				
<b>Elaine Boyd</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Karen Cisler</b> Environmental Interests	X				
<b>Dr. Wayne T. Davis</b> Conservation Interests	X				
<b>Stephen Gossett</b> Working for Industry with technical experience				X	
<b>Dr. Shawn A. Hawkins</b> Working in field related to Agriculture or Conservation	X				
<b>Richard Holland</b> Working for Industry with technical experience	X				
<b>John Roberts</b> Small Generator of Air Pollution representing Automotive Interests	X				
<b>Amy Spann</b> Registered Professional Engineer	X				
<b>Larry Waters</b> County Mayor	X				
<b>Jimmy West</b> Commissioner's Designee, Dept. of Economic and Community Development	X				
<b>Vacant</b> Working in management in Private Manufacturing					
<b>Vacant</b> Involved with Institution of Higher Learning on air pollution evaluation and control					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2014, 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: 08/08/14

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

Date: 11/21/2014

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 11/21/2014

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1/11/2017

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  
April 22, 2015  
Date

**Department of State Use Only**

Filed with the Department of State on: 4/27/15

Effective on: 7/26/15

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Human Services
<u>DIVISION:</u>	Family Assistance
<u>SUBJECT:</u>	Families First Personal Responsibility Plan and Diversion Program for Families with a One-Time Financial Need
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 71-3-104, 71-3-107, and 71-3-109; Public Chapters 787 and 960 of 2014
<u>EFFECTIVE DATES:</u>	July 1, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	<p>According to the Department, the rules concerning the personal responsibility plan will have a fiscal impact, but it will be absorbed within existing resources to make the necessary systems changes to comply with the provisions of Public Chapter 960 of 2014. The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation cost. The Department has concluded that the cost associated with implementation of these requirements can be handled with existing TANF dollars and that implementation will come at no additional cost since existing resources are sufficient to administer it.</p> <p>According to the Department, it will revise policies on handling of the diversion grant program to meet the guidelines included in Public Chapter 787. Any cost can be accommodated within existing resources.</p>
<u>STAFF RULE ABSTRACT:</u>	<p>In order to comply with the requirements of Public Chapter 960 of 2014, the rules require all Families First (FF)/ Temporary Assistance for Needy Families (TANF) personal responsibility plans to include the following requirements:</p> <ul style="list-style-type: none"><li>(a) If a need is identified relative to the child, caretakers must attend two or more conferences within a year with the child's teacher to review the child's status in school;</li><li>(b) If a need is identified relative to the child, caretakers must attend at least eight hours of parenting classes; and</li><li>(c) Caretakers must participate in such support services that the child may need as determined by the Department to overcome any school, family, or other barriers that may</li></ul>

interfere with the child's and the family's ability to be successful.

Failure to comply with the above requirements will result in reduction of the FF/TANF cash assistance.

Effective July 1, 2015, the rules implement the Families First Diversion Program as an alternative to the receipt of ongoing cash assistance under the Families First (FF)/Temporary Assistance for Needy Families (TANF). The purpose of the Diversion program is to provide an applicant with sufficient financial support to cover an immediate and compelling financial need that would divert the applicant's need to receive ongoing FF/TANF case assistance. This rule change is necessitated by the requirements of Public Chapter 787 of 2014.

The rules also make various clarifications and stylistic changes to the existing 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.

Date(s), Time(s) and Place(s) of Public Hearing(s): February 26, 2015, 1:30 p.m. Central Time, Department of Human Services, Second Floor, Tennessee River Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243.

A public hearing was held on the date, time and place noted above by the Department of Human Services to receive comments regarding amendments to the above-referenced rules. No comments were received.

**Regulatory Flexibility Addendum**

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

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

### **Impact on Local Governments**

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

These rules have no projected financial impact on local governments.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 04-06-15  
Rule ID(s): 5929, 5930  
File Date: 4/2/2015  
Effective Date: 7/1/2015

# Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Department of Human Services
<b>Division:</b>	Family Assistance
<b>Contact Person:</b>	David L. Henry
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee
<b>Zip:</b>	37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	David.L.Henry@tn.gov

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1240-01-47	Non-Financial Eligibility Requirements - Families First Program
Rule Number	Rule Title
1240-01-47-.16	Personal Responsibility Plan

Chapter Number	Chapter Title
1240-01-49	Families First Work Requirements
Rule Number	Rule Title
1240-01-49-.09	Diversion Program for Families with a One-Time Financial Need

**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 13, 2015”**

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-47  
NON-FINANCIAL ELIGIBILITY REQUIREMENTS  
FAMILIES FIRST PROGRAM**

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1240-01-47-.05	Reporting Addresses	1240-01-47-.19	Evidence Regarding Relationship
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1240-01-47-.11	Ineligible Aliens	1240-01-47-.25	Incapacity of a Parent
1240-01-47-.12	Verification of Alien Status	1240-01-47-.26	Absence of a Parent
1240-01-47-.13	Social Security Enumeration Requirements	1240-01-47-.27	Unemployment of a Parent
1240-01-47-.14	Age Requirements		

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**1240-01-47-.16 PERSONAL RESPONSIBILITY PLAN.**

(1) Personal Responsibility Plans Required for Eligibility.

- (a) As a condition of eligibility for the entire AU, the caretaker (both parents in a two (2) parent AU) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. The PRP is developed by the Department in consultation with the caretaker relative and:
- (b) Requires that all caretakers (both parents in a two (2) parent AU):
1. Agree to cooperate with child support enforcement activities;
  2. Assure that the children in the AU receive regular immunizations and health checks;
  3. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03, if not exempt;
  4. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to ~~validate work~~ verify thirty (30) hours per week of activities; and
  5. Assure that the children in the AU attend school, including kindergarten ~~when available;~~
  6. Agree to attend two (2) or more parent-teacher conferences within a school year with the child(ren)'s teacher to review the child(ren)'s status in school if the Department determines that the need is identified relative to the child(ren) in the AU;

**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 13, 2015”**

- ~~7. Agree to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified relative to the child(ren) in the AU;~~
  - ~~8. Agree to participate, in such support services that the child(ren) may require to overcome school, family, or other barriers that may interfere with the AU’s ability to become self-sufficient, as determined pursuant to the Department’s policy; and~~
  - ~~69. Agree to proper use of the electronic benefit transfer card, including agreement not to knowingly access public assistance benefits through an electronic benefit transfer card at any point of sale device, or automated teller machine or other online system used for the processing of payment or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.~~
- (2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an AU must sign a PRP. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-58 above. Subparagraph (b), part 69 above does not apply to a minor parent who is a dependent child in an AU.
  - (3) As a condition of eligibility for the entire AG/AU, the minor parent who is a caretaker of his/her own AG/AU must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan. The PRP requirements are the same as those listed in 1240-01-47-16(1)(a) above.
  - (4) The Department or its designees will provide benefits such as child care and transportation necessary to assist the individual in complying with the requirements set out in the Personal Responsibility Plan.
  - (5) Failure, without good cause, to comply with the provisions of the PRP ~~will~~ shall result in the following sanctions:
    - (a) ~~For failure to comply with the work requirement shall result in a mandatory period of case closure pursuant to rule 1240-01-49-04;~~
      - ~~1. For noncompliance with the work requirement, the entire AG will be ineligible for a Families First payment until compliance is met;~~
      - ~~2. For noncompliance with the work requirement of a minor parent who is not the head of household, the noncompliant individual’s needs will be removed in the determination of eligibility.~~
    - (b) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of public temporary cash assistance benefits by means of direct cash payment or electronic benefit transfer card.
    - (c) The following failures shall each result in a twenty percent (20%) reduction in temporary cash assistance, not to exceed forty percent (40%) for concurrent violations, until compliance is met.
    - (b) 1. For failure of one or more of the children in the AU to comply with the school attendance requirement:

**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 13, 2015”**

- ~~1. Failure of one or more of the children to meet this requirement will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.~~
- (c) ~~2. For failure to comply with meet the immunization and health check requirement for one or more children in the AU.~~
- ~~1. Failure to meet these requirements for one or more children will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.~~
- ~~3. Failure to comply with the requirement to attend two (2) or more parent-teacher conferences if the Department determines that the need is identified for one or more child(ren) in the AU.~~
- ~~4. Failure to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified for one or more child(ren) in the AU.~~
- ~~5. Failure to participate in support services as provided in paragraph (1)(b)(8) if the Department determines that the need is identified for one or more child(ren) in the AU.~~

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 73-1-126, 71-3-192, 71-3-103, 71-3-104, 71-3-108(d)(2)(D), 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. §§ 603, 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed April 2, 2014; effective July 1, 2014.

**“REDLINE VERSION-CHAPTER 1240-01-49 DATED  
NOVEMBER 19, 2014”**

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-49  
FAMILIES FIRST WORK REQUIREMENTS**

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		1240-01-49-.09	Diversion Program for Families with a One Time Financial Need and Eligibility Requirements

**1240-01-49-.09 DIVERSION PROGRAM FOR FAMILIES WITH A ONE-TIME FINANCIAL NEED AND  
ELIGIBILITY REQUIREMENTS.**

- ~~(1) AGs who are eligible for Families First may receive the option of a one-time lump sum payment, if appropriate for the AG's needs and situation. The one-time lump sum payment would be received in lieu of ongoing, recurring Families First benefits. The one-time lump sum payment is available to AGs:~~
- ~~(a) Who meet residency and benefit history requirements, as defined by policy;~~
  - ~~(b) Who do not have major barriers to employment as defined by policy;~~
  - ~~(c) Whose caretaker is job ready, as defined by policy; and~~
  - ~~(d) Who need only a one-time financial assistance payment to prevent the need for ongoing Families First benefits.~~
- ~~(2) Acceptance of the diversion one-time payment will make the AG ineligible for Families First for one year.~~
- ~~(3) Employed diversion AGs may receive up to three (3) months of Families First child care.~~
- ~~(4) Early Return. An AG who received a diversion lump sum payment may be eligible to return to Families First before the one-year period of ineligibility is finished if:~~
- ~~(a) The caretaker becomes disabled or incapacitated.~~
  - ~~(b) Receipt of Families First would prevent a child from being removed from the home by DCS.~~
  - ~~(c) Receipt of Families First would prevent the Assistance Unit/AG from becoming homeless (as defined by policy).~~
  - ~~(d) The caretaker begins caring for an in-home disabled relative who is not in school full-time.~~
  - ~~(e) There is an immediate threat of domestic violence.~~

**“REDLINE VERSION-CHAPTER 1240-01-49 DATED  
NOVEMBER 19, 2014”**

(1) General. The Families First Diversion Program is an alternative to the receipt of ongoing cash assistance under the Families First/Temporary Assistance for Needy Families (TANF). The purpose of the Diversion program is to provide an applicant with sufficient financial support to cover an immediate and compelling financial need that would divert the applicant's need to receive ongoing Families First/TANF cash assistance.

(2) Eligibility for diversion grant. The Department shall evaluate applications for cash assistance to determine whether a diversion grant may be appropriate to meet an applicant's immediate and compelling financial need.

(a) To receive a diversion grant, the Department must determine that the applicant is eligible to receive Families First/TANF.

1. A “child only” applicant, an applicant who is either a non-parental relative who is not included in the Assistance Unit or a caretaker receiving SSI benefits, shall not be eligible for a diversion grant.

2. If eligible for Families First/TANF, the applicant shall have the option to receive a diversion grant to cover an immediate and compelling financial need instead of receiving ongoing monthly cash assistance.

(b) The diversion grant shall:

1. Meet an applicant's immediate and compelling needs, as determined by the Department, so that an applicant or recipient can avoid temporary cash assistance; and

2. Not cover the same type of immediate need met by a previous diversion grant, unless the Department determines that the applicant has a new and verified emergency.

(c) Each applicant shall be required to submit appropriate documentation to verify immediate and compelling financial needs.

(3) Calculation of the diversion grant.

(a) The Department shall calculate the amount of a diversion grant on a case-by-case basis, based upon the aggregate amount of monthly temporary cash assistance an applicant is eligible to receive, not to exceed twelve (12) months.

(b) The applicant's temporary cash assistance lifelong eligibility period shall be reduced by the number of months equal to the total cash amount of the diversion grant that the applicant receives.

(4) A diversion grant is an alternative to ongoing Families First/TANF benefits. A recipient of a diversion grant is ineligible to receive temporary cash assistance for the number of months of temporary cash assistance equal to the total cash amount of the diversion grant.

(5) A recipient of a diversion grant may be eligible to receive up to three (3) months of subsidized child care, if the recipient is employed at least thirty (30) hours per week.

**Authority:** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 45 C.F.R. § 233.90; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007,*

**“REDLINE VERSION-CHAPTER 1240-01-49 DATED  
NOVEMBER 19, 2014”**

Chapter 31. **Administrative History:** Original public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/16/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/22/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/26/15

Date: March 16, 2015

Signature: David L. Henry

Name of Officer: David L. Henry  
Deputy General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: March 16, 2015

Notary Public Signature: Debra E. Batto

My commission expires on: May 8, 2018

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

Herbert H. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter  
3/26/2015  
Date

**Department of State Use Only**

Filed with the Department of State on: 4/2/2015

Effective on: 7/1/2015

Tre Hargett  
Tre Hargett  
Secretary of State

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

<b><u>BOARD:</u></b>	Tennessee Board of Physical Therapy
<b><u>SUBJECT:</u></b>	Examinations
<b><u>STATUTORY AUTHORITY:</u></b>	Tennessee Code Annotated, Sections 63-13-304(5) and 63-13-306(e)
<b><u>EFFECTIVE DATES:</u></b>	July 5, 2015 through June 30, 2016
<b><u>FISCAL IMPACT:</u></b>	None
<b><u>STAFF RULE ABSTRACT:</u></b>	Effective July 1, 2015, the Board will no longer approve individualized structured remediation plans for those graduates who have twice failed the Physical Therapy Exam. Instead, the Board will require that applicants who fail the examination more than two times after July 1, 2015 must submit proof of ten hours of additional clinical training and ten hours of additional coursework before the Board will approve their reapplication for subsequent testing beyond two attempts.

## **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.

Scott Newton, a representative of the Tennessee Physical Therapy Association, addressed the Board with support for the rule amendments.

At its March 9, 2015 meeting, the Board adopted additional clarifying changes to the remediation rule that specify an effective date for the changes and ensure that the provisions of the rule are consistent with T.C.A, § 63-13-306(e). (Brigina T. Wilkerson, David Harris, and David Finch were present and voted in favor of these changes on March 9, 2015.)

### **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 rule 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, and 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 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 rules do not establish 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 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 as opposed to 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 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 Physical Therapy

**Rulemaking hearing date:** 02/07/2014

- 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:**

Those engaging in the practice of physical therapy are subject to these rule amendments. The Department does not anticipate any cost to small business. The rule will allow, however, more candidates for consideration as businesses hire physical therapists and physical therapy assistants.

- 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 do not require any additional reporting, recordkeeping, or any other administrative costs for compliance. In fact, these rule amendments will reduce the recordkeeping duties of the Board as it will no longer keep records regarding the licensees' remediation programs.

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

These rule amendments should have no impact on small businesses and consumers. Any impact on businesses offering physical therapy services should be minimal as the proposed rule amendments will have no effect on the number of times a licensee can sit for the exam.

- 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:** None.

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

These rules do not provide for any exemptions for small businesses.

### **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.

**Department of State  
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Sequence Number: 04-08-15  
Rule ID(s): File 5932  
Date: Effective 4/6/15  
Date: 7/5/15

# 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*

<b>Agency/Board/Commission:</b>	Tennessee Board of Physical Therapy
<b>Division:</b>	Department of Health
<b>Contact Person:</b>	Grant Mullins
	Assistant General Counsel
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37234
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Grant.Mullins@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.08	Examinations

(Rule 1150-01-.08, continued)

- (c) Hand scoring services are available from the FSBPT at the request of the candidate. The FSBPT may charge a fee for this service.
- (8) Retaking
- (a) A candidate who fails the examination is eligible to repeat the licensure examination process described in this rule. An applicant who fails to qualify for licensure after a total of two (2) examination attempts, in any state, shall wait at least three (3) months after the last unsuccessful attempt before reapplying for examination.
- (b) If the individual neglects, fails to pass, or refuses to take the examination within twelve (12) months after being deemed eligible to sit for the examination, the application shall be denied and the file shall be closed. However, such individual may thereafter, make a new application pursuant to Rule 1150-01-.04, 1150-01-.05, 1150-01-.07, and 1150-01-.08.
- ~~(9) Remediation—Applicants who have twice failed the examination must obtain an Examination Performance Feedback report. This is a detailed diagnostic score report provided by the FSBPT for a fee. The applicant must develop a remediation plan. Such plan may be developed with the assistance of faculty at his/her accredited physical therapy educational program. The plan must outline the measures to be taken to address the weak areas, and must include the observation of physical therapy being practiced in a clinical setting for a minimum of twenty (20) hours during the three (3) month period described in subparagraph (8) (a).~~
- ~~(a) The applicant must sign and submit the written plan for remediation to the Board prior to implementation of the plan;~~
- ~~(b) Plans developed with assistance of an accredited physical therapy educational program should contain the signature of the faculty member recommending the remediation plan.~~
- ~~(c) The Board's consultant or any Board member may preliminarily review and approve the written plan, and a final decision will be made at the next Board meeting.~~
- ~~(d) If the plan is preliminarily approved, it can be implemented. When the Board gives final approval to the plan, the applicant must complete the plan and submit a report to the Board detailing the completion of each element of the remediation plan. Applicants will only be allowed to retake the examination after the remediation process has been approved and completed.~~
- (9) Effective July 1, 2015, the Board will no longer approve individualized structured remediation plans. However, those remediation plans already in effect prior to July 1, 2015 must be completed by the applicant. An applicant who fails the examination more than two (2) times after July 1, 2015 must submit proof of ten (10) hours of additional clinical training and ten (10) hours of additional coursework to the Board administrator before the Board will approve a reapplication for subsequent testing beyond two attempts.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-301, 63-13-304, 63-13-306, and 63-13-307.  
**Administrative History:** Original rule filed August 16, 1990; effective September 30, 1990. Repeal filed March 26, 1991; effective May 10, 1991. Repeal and new rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Amendment filed January 31, 2000; effective April 15, 2000. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed January 19, 2005; effective April 4, 2005. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed August 19, 2010; effective November 17, 2010.

(Rule 1150-01-.07, continued)

2. The applicant fails to sit for the written exam, if applicable, within six (6) months after being notified of eligibility.
  - (b) Whenever the applicant fails to complete the application process as stated in (a) above, written notification will be mailed to the applicant notifying him that the file has been closed. The determination of abandonment must be ratified by the Board. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.
- (10) If an applicant requests an entrance for licensure and, after Board review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, e.g., reciprocity to examination.
- (11) An applicant shall submit an original letter of recommendation from a physical therapist or physical therapist assistant licensed in the United States that attests to the applicant's good moral character. The letter cannot be from a relative of the applicant.

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

**1150-01-.08 EXAMINATIONS.** In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

- (1) The Board adopts as its examination for physical therapists and physical therapist assistants the National Physical Therapy Examinations endorsed by the Federation of State Boards of Physical Therapy or successor examinations.
- (2) Examination Application
  - (a) All applicants for examination shall apply for admission directly with the Federation of State Boards of Physical Therapy (FSBPT) by contacting:

Federation of State Boards of Physical Therapy	Telephone	(703) 299-3100
509 Wythe Street	Fax	(703) 299-3110
Alexandria, VA 22314	Internet	www.fsbpt.org

Application forms and instructions will be provided by the Board's administrative office.
  - (b) All educational requirements must be completed prior to filing an application for licensure or examination.
- (3) Eligibility Approval
  - (a) Only a person who has filed the required application, paid the fees, and been notified of acceptance by the Board shall be permitted to take the examination.
  - (b) The FSBPT will compile an applicant list and forward to the Board. The Board will review the applicant list provided by the FSBPT, determine the eligible applicants, and notify the FSBPT of such determination.

(Rule 1150-01-.08, continued)

- (c) An examination shall be administered only to bona fide candidates for initial licensure or candidates who are not licensed in another jurisdiction and do not have a qualifying exam score in another jurisdiction.
  - (d) An applicant for licensure and/or examination who has not met the requirements as set forth in T.C.A. §63-13-306 and §63-13-307 shall be refused permission to take the examination.
- (4) Eligibility Notification
- (a) The FSBPT will compile eligibility lists and forward to the Computer Based Testing Provider. The FSBPT will send a letter to each candidate containing a toll-free number to call to schedule the examination.
  - (b) The candidate will contact the Computer Based Testing Provider to schedule the examination at the location of their choice.
    - 1. Candidates must take the examination within sixty (60) days of the date on the eligibility letter provided by the FSBPT. If the candidate does not take the examination within this time period, they will be removed from the eligibility listings of the Computer Based Testing Provider and will be required to begin the examination application process again.
    - 2. Candidates may reschedule the examination up to two (2) working days prior to the scheduled test date by calling the toll-free number provided to them in their eligibility letter without penalty. Candidates who fail to give such notice to the Computer Based Testing Provider, and who fail to sit for the Examination as scheduled, will forfeit the examination fees paid and will be required to begin the examination application process.
- (5) Administration
- (a) Candidates must arrive at the test site at least fifteen (15) minutes prior to their scheduled appointment with the Computer Based Testing Provider.
  - (b) Candidates must have government-issued photo identification (passport, driver's license, etc.) as well as another piece of identification which contains a signature.
  - (c) All candidates will be thumb-printed and photographed at the testing center.
  - (d) All sessions will be videotaped.
- (6) Passing level. Candidates qualifying for licensure by examination must pass the examination with a criterion reference passing point. This passing point shall be set to equal a scaled score of six hundred (600) based on a scale ranging from two hundred to eight hundred (200-800).
- (7) Results
- (a) No information regarding pass/fail status will be available to candidates at the test site.
  - (b) Upon receipt of the examination group score reports in the Board's administrative office, the results will be mailed to each candidate with ten (10) working days. Scores will not be provided except in writing and by mail.

\* 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)
Brigina T. Wilkerson	X				
Brandon K. Hollis	X				
David Harris				X	
David Finch	X				
Minty R. Ballard				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 02/07/2014 (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: 12/12/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 02/07/14 (mm/dd/yy)

Date: 3/13/15

Signature: *Grant Mullins*

Name of Officer: Grant Mullins  
 Assistant General Counsel  
 Title of Officer: Department of Health

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

Notary Public Signature: *Suzanne McKeown*

My commission expires on: APRIL 19, 2017



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

*Herbert H. Slatery III*  
 Herbert H. Slatery III  
 Attorney General and Reporter  
4/1/2015  
 Date

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Filed with the Department of State on: 4/6/15

Effective on: 7/5/15

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

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

**DEPARTMENT:** Environment and Conservation

**DIVISION:** Water Resources

**SUBJECT:** State Revolving Fund

**STATUTORY AUTHORITY:** Tennessee Code Annotated, Section 68-221-1005(l)(3)

**EFFECTIVE DATES:** July 16, 2015 through June 30, 2016

**FISCAL IMPACT:** None

**STAFF RULE ABSTRACT:** The State Revolving Fund Loan Program (SRFLP) provides low cost financial assistance to local governments in the state relative to necessary wastewater facilities in order to improve and protect water quality and public health.

The Water Resources Reform and Development Act of 2014 (WRRDA) amended certain portions of the Federal Water Pollution Control Act (FWPCA or Clean Water Act). These amendments included an increase in the term of loans provided by SRFLPs from 20 years to 30 years and increased flexibility regarding the manner in which reasonable costs associated with administering the SRFLP are funded. Due to these recent federal changes the SRFLP rules are being amended to increase the term of loans provided from 20 years to 30 years and to remove current limitations on funding options for paying reasonable costs associated with administering the SRFLP.

## **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 comment period.

### **Regulatory Flexibility Addendum**

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

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

The State Revolving Fund (SRF) Loan Program provides low-interest loans that help local governments, utility districts, and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health. There is no cost to local governments as a result of this rulemaking.

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

There are no additional costs associated with this rulemaking.

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

There is no impact to small businesses and consumers resulting from this rulemaking, however there will be an increase in affordability of loan funds to smaller sized, less affluent communities in Tennessee.

- (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 is no impact to small businesses resulting from this rulemaking.

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

With this rulemaking the department will be consistent with federal guidelines and comparable to surrounding states.

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

To accomplish the goal of this rulemaking an exemption of small businesses is not possible because there is no impact on small businesses.

### **Impact on Local Governments**

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

The Department anticipates that this rulemaking will have a beneficial impact on local governments.

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Sequence Number: 04-18-15  
Rule ID(s): 5935  
File Date: 4-17-15  
Effective Date: 7-16-15

## 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).*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Sherwin Smith
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0166
<b>Email:</b>	<a href="mailto:Sherwin.Smith@tn.gov">Sherwin.Smith@tn.gov</a>

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0400-46-06	State Revolving Fund
Rule Number	Rule Title
0400-46-06-.05	Uses of the Fund
0400-46-06-.06	Application Procedure
0400-46-06-.08	Financing Methods

(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 0400-46-06  
State Revolving Fund

Amendments

Paragraph (2) of Rule 0400-46-06-.05 Uses of the Fund is amended by deleting it in its entirety and substituting instead the following:

- (2) To pay program administration costs ~~(not to exceed 4% of the annual federal capitalization grant)~~.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (4) of Rule 0400-46-06-.06 Application Procedure is amended by deleting it in its entirety and substituting instead the following:

- (a) identification of the planning area boundaries and characteristics, the existing problems and needs and problems for the next ~~20~~ 30 or more years;

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-46-06-.08 Financing Method is amended by deleting it in its entirety and substituting instead the following:

- (1) A construction loan, including loans made solely for equipment, shall be made for a period of time not to exceed ~~20~~ 30 years or the useful life, whichever is shorter.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 01/27/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/02/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/26/15

Date: 1-27-15

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: 1/27/2015

Notary Public Signature: [Handwritten Signature]

My commission expires on: 2/8/2017

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

[Handwritten Signature]  
Herbert H. Statory III  
Attorney General and Reporter  
4/10/2015  
Date

**Department of State Use Only**

Filed with the Department of State on: 4-17-15

Effective on: 7-16-15

[Handwritten Signature]  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State

SUBJECT: Access to Public Records Maintained by the Department of State, Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 8-3-104 and 10-7-501 et seq.

EFFECTIVE DATES: June 30, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rules provide procedures to allow access to records made or received by the Department of State that are subject to inspection and reproduction pursuant to the Tennessee Public Records Act, while preserving the confidentiality of confidential information and records as provided by state and federal law. The rules also implement and establish procedures and standard fees to be charged for the redaction, reproduction and/or duplication of public records maintained by the Department.

The fee schedule in the rules complies with the Schedule of Reasonable Charges for Copies of Public Records established by the Office of Open Records Counsel pursuant to Tennessee Code Annotated, Section 8-4-604. The copy fees will be 15 cents per single sided black and white page and 50 cents per colored page. Any actual cost for third party copying and/or archival services, as well as any costs for delivery by U.S. Mail, will be charged to the requestor. The Department will recoup its labor costs from requestors by charging an amount equal to the involved employees' hourly wages for time spent producing requested material beyond the first hour. The Department will waive fees associated with reproducing records when the total amount of the fees does not exceed \$10.00 per requestor per calendar year.

**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 rules are not expected to have any adverse impact on small businesses.

## **Impact on Local Governments**

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

These rules are not expected to have any adverse impact on local governments.

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Division of Publications**

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Nashville, TN 37243  
Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 09-01-15  
Rule ID(s): 5922  
File Date: 9/1/15  
Effective Date: 6/30/15

# 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).*

<b>Agency/Board/Commission:</b>	Tennessee Department of State
<b>Division:</b>	
<b>Contact Person:</b>	Mary Beth Thomas, General Counsel
<b>Address:</b>	600 Charlotte Avenue, First Floor, Tennessee State Capitol, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-2819
<b>Email:</b>	Mary.Beth.Thomas@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1360-10-01	Access to Public Records Maintained by the Department of State
Rule Number	Rule Title
1360-10-01-.01	Purpose and Scope
1360-10-01-.02	Definitions
1360-10-01-.03	Requests for Access to Records
1360-10-01-.04	Requests for Reproduction of Records
1360-10-01-.05	Fees and Costs for Reproduction of Public Records
1360-10-01-.06	Payment for Reproduction of Public Records
1360-10-01-.07	Waiver of Fees

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

## **SUBSTANCE OF PROPOSED NEW RULES**

### **CHAPTER 1360-10-01**

#### **ACCESS TO PUBLIC RECORDS MAINTAINED BY THE DEPARTMENT OF STATE**

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1360-10-01-.01 Purpose and Scope  
1360-10-01-.02 Definitions  
1360-10-01-.03 Requests for Access to Records  
1360-10-01-.04 Requests for Reproduction of Records  
1360-10-01-.05 Fees and Costs for Reproduction of Public Records  
1360-10-01-.06 Payment for Reproduction of Public Records  
1360-10-01-.07 Waiver of Fees

##### **NEW RULES**

###### **1360-10-01-.01 PURPOSE AND SCOPE.**

- (1) These rules are promulgated for the purpose of providing procedures to allow access to records made or received by the Department of State that are subject to inspection and reproduction pursuant to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501, *et seq.*, while preserving the confidentiality of confidential records and/or information as provided by federal or state law. These rules are also promulgated for the purpose of implementing and establishing procedures and standard fees to be charged for the compilation, redaction, reproduction and/or duplication of public records maintained by the Department of State. These rules do not govern charges for the reproduction or duplication of public records when separate statutory authority exists establishing the fee to be charged or the formula for charging.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 *et seq.*

###### **1360-10-01-.02 DEFINITIONS.** As used in these rules, the following terms are defined as follows:

- (1) "Secretary" means the Secretary of State.
- (2) "Department of State" means any of the divisions, sections or offices under the authority of the Department of State.
- (3) "Confidential record" means any record of the Department of State that is considered confidential, privileged, or protected under law.
- (4) "Public Record" means any record of the Department of State that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record.
- (5) "Public Records Act" or "TPRA" means the Tennessee Public Records Act as codified in Tenn. Code Ann. § 10-7-501, *et seq.*
- (6) "Record" means a document, paper, letter, map, book, photograph, microfilm, electronic data processing file and output, film, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Department of State, and that is maintained by the Department of State; a "record" may or may not be subject to disclosure under the TPRA.
- (7) "Records Custodian" means an employee of the Department of State who has direct supervisory authority over the specific division, section or office of the Department of State wherein the requested records are maintained.

- (8) "Redact" or "Redaction" means to black out, remove or otherwise protect from viewing, a portion of a record.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.03 REQUEST FOR INSPECTION OF RECORDS.**

- (1) An inspection of records shall take place during the regular business hours of the Department of State from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays, and shall be scheduled at a time that is mutually agreeable between the Department of State and the requestor.
- (2) Requests for inspection of records may be made orally or in writing to the appropriate division within the Department of State, and shall identify with sufficient detail the record which is requested.
- (3) All requestors are required to present a valid (current) Tennessee driver's license to staff at the time of making the request for inspection of records. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with the General Counsel for the Secretary of State.
- (4) All requests for access to or inspection of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for access is not sufficiently detailed for the records custodian to determine what records are being requested, the custodian of records or his or her representative will contact the requestor to advise of same, and will not begin complying with the request until an amended request is made that is sufficiently detailed. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request will be denied.
- (5) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
  - (a) Review, Assessment and Redaction of Records Prior to Inspection.
    1. Before providing access to the requested record, the records custodian or his or her representative shall review the requested record as quickly as reasonably possible, and make an assessment of the scope and accessibility of the requested record.
    2. Upon review and prior to providing access to any record or portion of a record, the records custodian or his or her representative shall redact any data or information that he or she has reason to believe is or may be a confidential record or otherwise protected by law.
  - (b) If the Department of State determines after this review and assessment that access to the requested public record can be provided, the Department of State shall do so as promptly as possible.
  - (c) If it appears from the Department of State's review and assessment that access to the requested public record cannot be made available for inspection within the time frame enumerated within the TPRA, the records custodian shall notify the requestor in accordance with the provisions of the TPRA contained in Tenn. Code Ann. § 10-7-503 (a)(1)(B). Additionally, when a large volume of records is requested, the Department of State may provide an estimated production schedule and make records available for inspection in segments.
  - (d) If it appears from the Department of State's review and assessment that limited or no access to the requested record can be provided, the Department of State shall communicate this fact as promptly as possible.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

#### **1360-10-01-.04 REQUESTS FOR REPRODUCTION OF RECORDS.**

- (1) Requests for reproduction of records must be made in writing and submitted to the appropriate records custodian within the Department of State. The request must identify with sufficient detail the record which is requested.
- (2) All requestors are required to present a valid (current) Tennessee driver's license to staff at the time the request is submitted. If a requestor does not have a valid Tennessee driver's license, but does have photo identification with a home address that has been issued by a Tennessee governmental entity, such identification will be accepted. If a requestor has government issued photo identification without a home address, then additional documentation of Tennessee citizenship must be presented. The sufficiency of such documentation will be determined on a case by case basis, after consultation with General Counsel for the Secretary of State.
- (3) All requests for reproduction of records will be processed promptly and in accordance with all applicable time frames enumerated in the TPRA. If the request for access is not sufficiently detailed for the records custodian to determine what records are being requested, the records custodian or his or her representative will contact the requestor to advise of same, and will not begin complying with the request until an amended request is made that is sufficiently detailed. If, after attempting to clarify the request, the records custodian is still unable to determine what is being requested, the request will be denied.
- (4) Prior Review and Assessment for Confidential, Privileged or Protected Information or Data.
  - (a) Review, Assessment and Redaction of Records for Reproduction Request.
    1. Before reproducing the requested record, the records custodian or his or her representative shall review the requested record as soon as practicable and make an assessment of the scope and accessibility of the requested record.
    2. Upon review and prior to reproducing the record, or portion of the record, the records custodian or his or her representative shall redact any data or information that he or she has reason to believe is or may be a confidential record or otherwise protected by law.
  - (b) If the records custodian determines after this review and assessment that reproduction of the requested public record can be provided, the records custodian shall do so as promptly as possible in accordance with Section 1360-10-01-.05 below.
  - (c) Staff, consultants, or contractors for the Department of State shall be responsible for the reproduction of any requested public record. A requestor does not have the right to reproduce requested public records through use of the requestor's own equipment.
  - (d) If it appears from the records custodian's review and assessment that reproduction of the requested public record cannot be produced either immediately or within the time frame enumerated within the TPRA, the records custodian shall notify the requestor in accordance with the provisions of the TPRA contained in Tenn. Code Ann. § 10-7-503 (a)(1)(B). Additionally, when a large volume of records is requested, the Department of State may provide an estimated production schedule and produce records in segments.

Statutory Authority: Tenn. Code .Ann. §§ 8-3-104 and 10-7-501 et seq.

#### **1360-10-01-.05 FEES AND COSTS FOR REPRODUCTION OF PUBLIC RECORDS.**

- (1) Prior to the reproduction of requested public records, the records custodian shall provide to the requestor a reasonable estimate of the fees and costs associated with the reproduction of the public record in writing. The estimate shall include the cost of delivery when applicable and any other necessary fee, including an estimate of labor charges, which shall be calculated as follows:
  - (a) Copy and delivery charges:

1. The Department of State may assess a charge of 15 cents per page for each standard 8 1/4 x 11 or 8 1/4 x 14 black and white copy produced. The Department of State may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
2. If a public record is maintained in color, the Department of State may assess a charge of 50 cents per page for each 8 1/4 x 11 or 8 1/4 x 14 color copy produced.
3. Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requestor returns to the records custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service, and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge. It is within the discretion of the records custodian to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
4. If the Department of State utilizes an outside vendor to produce copies of requested records because it is unable to produce the copies in its office, the cost assessed by the vendor to the Department of State shall be recoverable from the requestor.
5. If the Department of State is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the Department of State may assess the requestor the cost assessed by the governmental entity for retrieval of the records.

(b) Labor charges:

1. "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time required to be spent locating, retrieving, reviewing, redacting, and reproducing the records.
2. "Labor threshold" is defined as the labor of the employee(s) reasonably necessary to produce requested material for the first hour incurred by the records custodian in producing the material.
3. The Department of State shall charge the requestor an amount equal to the hourly wage of the employee(s) for the labor reasonably necessary to produce the requested records above the "labor threshold." The hourly wage shall be derived from the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year.
4. In calculating the charge for labor, the records custodian shall determine the number of hours each employee spent processing a request then subtract the one (1) hour labor threshold from the number of hours the highest paid employee spent producing the request. The records custodian shall then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian shall add together the totals for all the employees involved in the request and that will be the total amount of labor that may be charged.

Statutory Authority: Tenn. Code .Ann, §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.06 PAYMENT FOR REPRODUCTION OF PUBLIC RECORDS.**

- (1) The Department of State may require estimated costs to be paid prior to reproduction of public records, or the extraction of requested information or data depending on the cost of fulfillment of the request. If pre-payment is required, payment should be made to "Tennessee Department of

State” by check, cashier’s check or money order and directed to the General Counsel of the Department of State.

Statutory Authority: Tenn. Code .Ann. §§ 8-3-104 and 10-7-501 et seq.

**1360-10-01-.07 WAIVER OF FEES.**

- (1) All fees associated with the reproduction of records, including any delivery and labor fees, will be waived when the total amount of such fees are equal to or less than Ten Dollars (\$10.00) per requestor per calendar year. Any fees associated with the reproduction of records above Ten Dollars (\$10.00) per requestor per year shall be charged as otherwise provided by this chapter.

Statutory Authority: Tenn. Code Ann. §§ 8-3-104 and 10-7-501 et seq.

\* 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 3/10/15 (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: MARCH 10, 2015  
 Signature: Mary Beth Thomas  
 Name of Officer: Mary Beth Thomas  
 Title of Officer: General Counsel  
 Subscribed and sworn to before me on: MARCH 10, 2015  
 Notary Public Signature: Bettye L. Stanton  
 My commission expires on: JULY 6, 2015

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

Herbert H. Slatery III  
 Herbert H. Slatery III.  
 Attorney General and Reporter  
3/27/2015 Date

**Department of State Use Only**

Filed with the Department of State on: 4/1/15  
 Effective on: 6/30/15  
Tre Hargett  
 Tre Hargett  
 Secretary of State

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 2015 APR -1 AM 11:27  
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## G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Tennessee Board of Dispensing Opticians
<u>SUBJECT:</u>	Definitions, Scope of Practice, Continuing Education, and Apprenticeship Training Program
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-1-302
<u>EFFECTIVE DATES:</u>	June 30, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The rules add definitions of “dispensing optician” and “optical dispensing”.</p> <p>The rules add language to the scope of practice, specifying that the practice of optical dispensing includes the interpretation of written prescriptions and the transposing of prescriptions.</p> <p>The current rules specify that the Board will set the annual continuing education requirements for dispensing opticians each January. The new rules require that licensees complete eight hours of continuing education each year; four hours in spectacles, two hours in contact lenses, and two hours in either optional courses or supervisory courses.</p> <p>The rules make several changes concerning the apprenticeship training program. Significantly, the rules remove the requirement that a dispensing optician, optometrist, or ophthalmologist who supervises an apprenticeship training must have been licensed in Tennessee for at least three years. Under the new rule, the supervising professional need only be licensed in Tennessee. Also, the rules cap the maximum duration of an apprenticeship at six years after which time an apprentice who has not completed the program will be required to start the apprenticeship from the beginning.</p>

**Department of State****Division of Publications**

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 Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 04-03-15  
 Rule ID(s): 5924  
 File Date: 4/1/15  
 Effective Date: 4/30/15

# 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*

<b>Agency/Board/Commission:</b>	Tennessee Board of Dispensing Opticians
<b>Division:</b>	TDH- Health Related Boards
<b>Contact Person:</b>	Matthew Gibbs
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Matthew.Gibbs@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0480-01	General Rules Governing Dispensing Opticians
Rule Number	Rule Title
0480-01-.01	Definitions
0480-01-.02	Scope of Practice
0480-01-.12	Continuing Education (CE)
0480-01-.14	Apprenticeship Training Program

**RULES  
OF  
THE TENNESSEE BOARD OF DISPENSING OPTICIANS**

**CHAPTER 0480-01  
GENERAL RULES GOVERNING DISPENSING OPTICIANS**

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0480-01-.09	Renewal of License	0480-01-.21	Branch Offices
0480-01-.10	Supervision	0480-01-.22	Guidelines for Contact Lenses
0480-01-.11	Retirement and Reactivation of License	0480-01-.23	Consumer Right-To-Know Requirements
0480-01-.12	Continuing Education (CE)		

**0480-01-.01 DEFINITIONS.** As used in these rules, the terms and acronyms shall have the following meanings ascribed to them:

- (1) Advertising - Includes, but is not limited to, business solicitations, with or without limiting qualifications, by a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual, radio, video, or television broadcasting or any other means designed to secure public attention.
- (2) Applicant - Any individual seeking licensure by the Board and who has submitted an official application and paid the application fee.
- (3) Board - The Board of Dispensing Opticians.
- (4) Board administrative office - The office of the administrator assigned to the board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (5) Board Designee - Any person who has received a written delegation of authority from the board to perform Board functions subject to review and ratification by the full Board where provided by these rules.
- (6) Closed File - An administrative action which renders an incomplete or denied file inactive.
- (7) Department - Tennessee Department of Health.
- (8) Direct Supervision – The requirement that the supervising licensed dispensing optician, optometrist, or ophthalmologist direct, coordinate, review, inspect, and approve acts or services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.
- (9) Dispensing Optician – A person holding a current, valid license issued by the Board that authorizes that person to engage in the practice of optical dispensing.
- (910) Division - The Division of Health Related Boards, Department of Health, from which the Board receives administrative support.

(Rule 0480-01-.01, continued)

- (4011) Examination Service - The testing service whose written examination has been adopted by the Board.
- (4112) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; a payment required of an applicant or licensee pertaining to the application or license.
- (4213) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for rendering services.
- (4314) Good Moral Character - The quality of being well regarded in personal behavior and professional ethics.
- (4415) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (4516) HRB - When the acronym HRB appears in the text of these rules, it represents Health Related Boards.
- (4617) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.
- (18) Optical Dispensing – The design, verification and delivery to the intended wearer of lenses, frames, and other specially fabricated optical devices upon prescription.
- (4719) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (4820) Recognized educational institution - Any educational institution that is accredited by a nationally or regionally recognized educational body or is approved by the board.
- (4921) Registrant - Any person who has been lawfully issued a license.
- (2022) Use a title or description of - To hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards, or other instruments of professional identification.
- (2123) Written evidence - Includes, but is not limited to, verification from supervisors or other professional colleagues familiar with the applicant's work.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-118, 63-14-101, 63-14-102, 63-14-103, 63-14-106, and 63-14-107. **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 25, 1986; effective January 9, 1987. Repeal and new rule filed August 2, 1995; effective October 16, 1995. Amendment filed August 7, 1997; effective October 27, 1997. Amendment filed May 6, 2002; effective July 20, 2002. Amendment filed March 27, 2009; effective June 10, 2009.

#### 0480-01-.02 SCOPE OF PRACTICE.

- ~~(1) The practice of dispensing opticians includes the preparation, adaptation and dispensing of lenses, spectacles, eye glasses and optical devices on the written prescription of an optometrist or a physician.~~
- (1) The practice of optical dispensing includes the preparation, adaptation and dispensing of lenses, spectacles, eye glasses and optical devices on the written prescription of an

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optometrist or a physician including the interpretation of written prescriptions and the transposing of prescriptions.

- (2) Nothing contained in these rules shall be construed to permit persons licensed under T.C.A. §§63-14-101 through 63-14-121 to examine or exercise eyes, nor to diagnose, treat, or prescribe for any human injury, disease or ailment.
- (3) Dispensing opticians may fit contact lenses only in the presence of and under the direct supervision of a licensed optometrist or ophthalmologist.
- (4) ~~Nothing shall~~ Nothing in this section or in this chapter shall be construed to require the licensing of persons, firms or corporations which are wholesale suppliers to opticians, optometrists or ophthalmologists, of lenses, spectacles, eye glasses or optical devices, or to prevent such persons, firms or corporations from the preparation of lenses, spectacles, eye glasses or optical devices, defined to be the surfacing, fabrication, or finishing of any substance or material used or to be used for the correction of human vision, or the adaptation of such lenses, spectacles, eye glasses or optical devices, defined to be the mounting of such a prepared substance or material to frames or to other devices designed to be worn by the user thereof, as long as such preparation or adaptation is done under the written order of an ophthalmologist or optometrist only, and as long as such lenses, spectacles, eye glasses or optical devices so prepared or adapted are delivered directly to the office of an ophthalmologist, optometrist or dispensing optician, and as long as such persons, firms or corporations do not engage in advertising as to the price of either the finished product or any part thereof.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-102, and 63-14-103. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995.

#### 0480-01-.03 NECESSITY OF LICENSURE.

- (1) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 14 of the Tennessee Code Annotated to represent himself as a dispensing optician or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcement, telephone listings, calling cards, or other instruments of professional identification.
- (2) Dispensing Optician is one of the healing arts, and as such the practice of which is restricted to those persons credentialed by the board. Persons engaging in the practice of dispensing optician without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.
- (3) No person shall hold himself out to the public by a title or description of services incorporating the words "dispensing optician", nor shall state or imply that he is licensed as such, unless such person is licensed or expressly exempted pursuant to T.C.A. §§ 63-14-101, et. seq.
- (4) Use of Titles – Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Licensed Dispensing Optician" and to engage in the practice of dispensing opticians, as defined in T.C.A. § 63-14-102. Any person licensed by the Board to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0480-01-.20(2)(a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the dispensing optician to disciplinary action pursuant to T.C.A. § 63-14-104(2).

(Rule 0480-01-.11, continued)

- (a) Request in writing from the board's administrative office an affidavit of retirement form.
  - (b) Complete and submit the affidavit affirming that, while in retired status, the licensee will not practice or in any way indicate or imply that he holds an active Tennessee licensee or use within the State of Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed dispensing optician.
- (3) A person who holds a retired license may apply to reactivate his license in the following manner:
- (a) Submit a written request to the board's administrative office for licensure reactivation;
  - (b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 0480-01-.06. If retirement was pursuant to Rule 0480-01-.09, and reactivation was requested prior to the expiration of one year from the date of retirement, the Board may require payment of the late renewal fee, past due renewal fees, and state regulatory fees as provided in Rule 0480-01-.06; and (c) Submit evidence of compliance with the continuing education provisions of Rule 0480-01-.12. Each individual is responsible for maintaining continuing education documentation until such time as he applies for reinstatement.
- (4) Upon receipt of the reinstatement application, fees, and continuing education documentation, the Board shall consider the reinstatement application.
- (5) The Board shall require an applicant whose license has been revoked, suspended, or retired for a period of three (3) or more years to apply, take and pass the examinations, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

**Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed October 18, 2005; effective January 1, 2006.

#### 0480-01-.12 CONTINUING EDUCATION (CE).

- (1) Basic Requirements
  - (a) Each person licensed by the Board is required to complete eight (8) clock hours of continuing education during each calendar year which shall include: ~~CE requirements will be set each January by the board and licensees will be notified in writing.~~ four (4) hours in spectacles, two (2) hours in contact lenses, and two (2) hours in optional courses. Supervisors of apprentices shall fulfill the two (2) optional courses by taking two (2) hours in supervisory courses.
  - (b) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.
    1. Documentation must include the date, location, and total time transpired if the continuing education was presented in a traditional format

(Rule 0480-01-.12, continued)

2. Documentation must include proof of successful completion of a written post-course examination to evaluate material retention if the course was presented in a multi-media format.
- (c) The licensee must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the licensee's attendance or original letters from course providers are such evidence.
  - (d) For new licensees, submitting proof of successful completion of a two (2) year course of study in opticianry in a college level program recognized and approved by the Board, pursuant to rule 0480-01-.04 (3) (b), or submitting proof of successful completion of a three (3) year training program, pursuant to rule 0480-01-.04 (3) (c), shall be considered proof of sufficient preparatory education to constitute continuing education clock hour credit for the calendar year in which the applicant is approved.
- (2) Acceptable Continuing Education - Traditional Formats
- (a) The Board will accept any dispensing optician clinic, workshop, seminar or lecture attended in Tennessee or attended at any national or regional meeting not in Tennessee for continuing education (CE) credit if it is in accordance with the following guidelines:
    - (b) The subject matter must fall within the limit of subjects approved by the Board.
    - (c) Registrants, instructors and panelists will be eligible for credit.
    - (d) CE will be awarded on the following basis:
      1. Any single session covering not less than 2-1/2 hours will be assigned 3 hours of CE.
      2. Any single session covering not less than 1 hour, 40 minutes will be assigned 2 hours of CE.
      3. Any single session covering not less than 50 minutes will be assigned 1 hour of CE.
      4. The hours shall be based on actual instruction or program time, excluding registration time and coffee breaks, but including question and answer periods;
      5. The total credits to be earned in any single 24 hour period cannot exceed 12;
      6. Course approval procedure for course providers - The subject matter, instructor and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
        - (i) a course content description or outline.
        - (ii) names of all lecturers.
        - (iii) brief resume of all lecturers.

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- (iv) number of hours of educational credit requested.
  - (v) dates, locations and hours of course.
  - (vi) copies of materials to be utilized in the course.
  - (vii) how verification of continuous attendance is to be documented.
  - (viii) how notification to every Tennessee licensed dispensing optician is to be accomplished.
  - (ix) documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (e) Under no circumstances shall continuing education courses be approved if the materials required by subparts (2) (d) 6. (i) - (ix) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board at which approval is sought that precedes the course.
- (f) Notwithstanding the provisions of subparagraph (a), out-of-state continuing education providers may seek course approval if they are a dispensing optician regulatory agency or association from a state that borders Tennessee.
- (g) Course approval procedure for individual licensees
1. Notwithstanding the provisions of subparagraph (a), any licensee may seek approval to receive credit for successfully completing continuing education courses by complying with the provisions of part (2) (d) 6., subparts (2) (d) 6. (i) through (vii) and subpart (2) (d) 6. (ix).
  2. To retain course approval, the licensee must submit a course evaluation form, supplied by the Board, to the Board's administrative office within thirty (30) days after successfully completing the course.
- (3) Acceptable Continuing Education - Multi-Media Formats
- (a) The Board will accept no more than two (2) hours of the annual requirement as provided in subparagraph (1) (a) in Multi-Media formats for continuing education (CE) credit if it is in accordance with the following guidelines:
1. Under no circumstances shall Multi-Media format continuing education courses be approved for course providers or awarded CE credit for individual licensees if the materials required by subparagraphs (3) (b) or (3) (c) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course.

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2. The number of CE hours awarded for any course shall be determined by the Board during the course approval procedure as provided in subparagraphs (3) (b) or (3) (c).
  3. The licensee must successfully complete a written post-course examination to evaluate material retention.
- (b) Course approval procedure for course providers - The subject matter, instructor/author and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
1. a course content description or outline.
  2. names of all lecturers/authors.
  3. brief resume of all lecturers/authors.
  4. number of hours of educational credit requested.
  5. copies of materials to be utilized in the course.
  6. how verification of successful course completion is to be documented.
  7. how notification to every Tennessee licensed dispensing optician is to be accomplished.
  8. documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (c) Course approval procedure for individual licensees - Any licensee may seek approval to receive credit for successfully completing Multi-media format continuing education courses by submitting the documentation required in parts (3) (b) 1. through 5. and part (3) (b) 8.
- (d) Multi-Media courses may include courses utilizing:
1. The Internet
  2. Interactive Teleconferencing
  3. Interactive Videoconferencing
- (4) Violations

(Rule 0480-01-.12, continued)

- (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
  - (b) 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.
  - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (34) (b) above may be subject to disciplinary action.
  - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.
- (5) Continuing Education for Reactivation of License
- (a) For Reactivation of retired licensure
    1. An individual whose license has been retired for three (3) years or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period. An individual whose license has been retired for more than three (3) years shall apply, take and pass the examinations as required by the Board, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.
    2. Any individual requesting reactivation of a license which has been retired must submit along with the reactivation request, verification which indicates the attendance and completion of hours of continuing education which must have been begun and successfully completed within 6 months immediately preceding the date of requested reinstatement. The continuing education hours completed to reinstate a retired license shall not be credited toward the continuing education hours required to be completed by the end of the calendar year following reinstatement.
    3. The Board, upon receipt of a written request and explanation, may waive or condition any or all of the continuing education required for reactivation of a retired certificate or license in emergency situations.
  - (b) For reactivation of revoked licensure - No person whose license has been revoked for failure to comply with continuing education may be reinstated without complying with the requirements. Continuing education will accumulate at the same rate as for those licenses which are active. The required clock hours of continuing education must have been begun and successfully completed within six (6) months immediately following the date of revocation or suspension. A license which has been revoked for noncompliance with the CE requirements shall also be subject to the renewal late fee pursuant to rule 0480-01-.06.
  - (c) For reactivation of expired licensure - No person whose license has expired may be reinstated without submitting evidence of continuing education. The continuing

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education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been successfully completed within six (6) months immediately preceding the date of reinstatement.

- (d) Continuing education hours obtained as a prerequisite for reactivating a license may not be counted toward the calendar year requirement.

(6) Waiver of Continuing Education

- (a) The Board may grant a waiver to certify attendance and completion of the required hours of continuing education, if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the individual, i.e., disability, residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.
- (b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board administrative office.
  - 1. A written request for a waiver which specifies what requirement is sought to be waived and a written and signed explanation of the reasons for the request.
  - 2. Any documentation which supports the reason for the waiver requested or which may be subsequently requested by the board.
- (c) A waiver approved by the Board is effective for only the calendar year for which the waiver of the requirement is sought, unless otherwise specified in writing by the Board.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-14-101, 63-14-103, 63-14-104, 63-14-106, 63-14-107, and 63-14-111. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed August 7, 1997; effective October 27, 1997. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed May 6, 2002; effective July 20, 2002. Amendment filed May 12, 2003; effective July 26, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 18, 2005; effective January 1, 2006.

**0480-01-.13 CODE OF ETHICS.**

- (1) The following code of ethics shall govern the conduct of licensed dispensing opticians in the practice of opticianry.
  - (a) Keep the visual welfare of the consumer upper-most at all times.
  - (b) Promote in every possible way the better care of the visual needs of the citizens of this state.
  - (c) Continuously enhance their educational and technical proficiency so that their customers shall receive the benefits of all knowledge and improvements in visual care.
  - (d) Insure that no person shall lack the necessary information on visual care regardless of the financial status of the person.
  - (e) Conduct themselves as an exemplary citizen.

(Rule 0480-01-.13, continued)

- (o) Engaging in fraud, deception, misrepresentation, false promise or false pretense in the practice of opticianry.
- (p) Fraudulently altering patient/customer records.
- (q) Practicing opticianry while the ability to practice is impaired by alcohol, drugs, physical disability or mental disability.
- (r) Abuse of a consumer or sexual misconduct with a consumer.
- (s) Knowingly engaging in a practice involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public safety.
- (t) Refusing to provide goods or services to a person because of such person's race, creed, color, or national origin.
- (u) Preparing, adapting or dispensing lenses, spectacles, eye glasses, or optical devices that are not of good workmanship or do not meet the standards set out in the American National Standard for Ophthalmics - Prescription Ophthalmic Lenses - Recommendations (ANSI Z-80.1-1987 edition).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-14-101, 63-14-102, 63-14-103, 63-14-104, and 63-14-111. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995.

#### 0480-01-.14 APPRENTICESHIP TRAINING PROGRAM.

- (1) Any person wishing to practice the profession of dispensing opticianry and who intends to fulfill the education and training requirements via the apprenticeship provision shall make application to and register with the Board pursuant to T.C.A. § 63-14-103(a)(1) and (f).
  - (a) The apprentice shall designate, in the application, a supervising dispensing optician, optometrist or ophthalmologist, and an alternate supervisor. The Board administrator shall notify the apprentice when the supervisor, alternate supervisor, training program, and training setting have been approved.
  - (b) The Board administrator shall notify the apprentice of the training program start date.
  - (c) Except as provided in Rule 0480-01-.04(3), only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (2) ~~Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state for at least three (3) years and whose license to practice in Tennessee is current, undisciplined, unrestricted and unencumbered.~~
  - (2) Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state and whose license to practice in Tennessee is current, undisciplined and unrestricted.
    - (a) The supervisor shall work at the premises where the apprenticeship training is conducted.
    - (b) The supervisor shall provide direct supervision at all times in accordance with T.C.A. § 63-14-103(a) and (f) and rule 0480-01-.01(8).

(Rule 0480-01-.14, continued)

- (3) Changes in the information provided in the original apprentice application shall be reported to the Board in writing within 30 days of such change.
- (4) Length of Training Program - Pursuant to T.C.A. § 63-14-103(a)(1), the period of apprenticeship training ~~must be~~ shall be not less than a minimum of three (3) years and no more than six (6) years and must include a total of five thousand two hundred and fifty (5250) hours of full time or part time education and training under qualified supervision. If the apprenticeship is not completed within a maximum of six (6) years, the applicant shall be required to start the apprenticeship program from the beginning.
  - (a) Full Time - Full time work is defined as fifty (50) weeks of at least thirty-five (35) hours per week or one thousand, seven hundred and fifty (1,750) hours per year.
  - (b) Part Time - Any part time work must be at least ~~one thousand five hundred (1,000)~~ 500 hours per year to count toward the ~~three (3)-year~~ five thousand two hundred and fifty (5,250) hour requirement.
  - (c) Optical Laboratory Work - No more than one (1) year / one thousand seven hundred and fifty (1,750) hours of credit will be allowed for experience obtained in an optical laboratory under supervision of a licensed eye care professional.
  - (d) Rescinding of Approval of Training Program
    1. The Board may rescind its approval of any apprenticeship training program if it determines that the facilities and equipment available to the apprentice are not adequate or when the apprentice is not being properly trained or supervised.
    2. The Board may rescind its approval of any apprenticeship training program if it determines that the apprentice is not actively pursuing licensure including, but not limited to, working less than one thousand (1000) hours per year as provided in subparagraph (4) (b), and failing to file semi-annual evaluation reports in a timely manner as provided in subparagraph (5) (c).
    3. If the Board rescinds its approval of an apprenticeship training program, the apprentice may no longer work or train as a dispensing optician. To continue training, the apprentice must apply to the Board and register for a new apprenticeship training program and must begin a new three (3) year / five thousand two hundred and fifty (5250) hour apprenticeship as provided in this rule.
- (5) Supervision
  - (a) Limitations
    1. A licensed dispensing optician may supervise no more than two (2) apprentices concurrently.
    2. A licensed dispensing optician may provide supervision in the temporary and impermanent absence (a.k.a. alternate supervision) of the supervising licensee to one (1) of the two (2) apprentices being supervised concurrently.
    3. The Board will disallow the apprenticeship training of an apprentice whose supervisor is supervising more than two (2) apprentices concurrently. Such training shall not be considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.

(Rule 0480-01-.14, continued)

- (b) The apprentice shall function under the direct supervision of a sponsoring/designated licensed supervisor who must be working in the same premises where the apprenticeship training is conducted and must be present at all times (T.C.A. § 63-14-103).
- (c) The filing of semi-annual evaluation reports for each apprentice under the direct supervision of a licensed eye care professional is mandatory. The appropriate form will be supplied by the Board and shall be notarized before submission. Semi-annual evaluation periods begin 6 months from initial registration and each 6 months thereafter until licensure as a dispensing optician has been achieved.
  1. The semi-annual evaluation report must be received in the Board's administrative office no later than thirty (30) days after the six (6) month training period has ended or the training period shall be disallowed and not considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
  2. If two (2) semi-annual evaluation reports are not received by the Board's administrative office within thirty (30) days after the applicable training periods have ended, the Board will rescind its approval of the apprenticeship training program. The apprentice will not receive credit for the two (2) training periods for which the semi-annual evaluation reports were not submitted or were received by the Board's administrative office later than thirty (30) days after the applicable training period. In order to continue the apprenticeship training program, a new application for an apprenticeship training program must be submitted.
- (6) The Apprenticeship Registration does not permit or empower the apprentice to practice as a Dispensing Optician during the absence of the sponsoring/designated licensed supervisor under whose supervision he or she is registered.
  - (a) Apprentice training for spectacle dispensing must include, but is not limited to the following subjects:
    1. Optical Terminology
    2. Anatomy of the Eye
    3. Physiology of the Eye
    4. Optical Concepts, Light Theory
    5. Lens power (Meridians of Power)
    6. Lens Form and Analysis, Transposition
    7. Base Curve, Radius of Curvature
    8. Prism and its Effect
    9. Lens Types and Materials
    10. Frame Styles, Sizes and Materials
    11. Instrumentation
    12. Prescription Analysis

(Rule 0480-01-.14, continued)

13. Fitting of Eyewear
14. Ordering of Eyewear
15. Verification of Parameters
16. Bench Adjustment
17. Final Personal Adjustment/Alignment
18. Delivery Procedures
19. Laboratory Procedures:
  - (i) Blank Size
  - (ii) Patterns
  - (iii) Layout
  - (iv) Blocking
  - (v) Edging
  - (vi) Deblocking
  - (vii) Hand Edging
  - (viii) Grooving
  - (ix) Coatings
  - (x) Filters
  - (xi) Tints
  - (xii) Engraving
  - (xiii) Heat and Chemical Treating
  - (xiv) Testing for Impact Resistance
  - (xv) Mounting
  - (xvi) Alignment
  - (xvii) Inspection
  - (xviii) Verification
20. Repair, Replacement, Realignment
21. Subnormal Vision Aids
22. Inventory Management

(Rule 0480-01-.14, continued)

23. Industry Standards (Z80 ANSI Standards)
  24. State and Federal Laws
  25. Physician/Technician Protocol and Relationships
  26. Other Related Concepts:
    - (i) Basic Mathematics and Science
    - (ii) Public Relations
    - (iii) Sales
    - (iv) Accounting
    - (v) Management
- (b) Apprenticeship training for contact lens dispensing must include, but is not limited to, these subjects:
1. Optical and Contact Lens Terminology
  2. History of Contact Lens
  3. Anatomy of the Eye:
    - (i) Structure of the Cornea
    - (ii) Topography
  4. Physiology of the Eye:
    - (i) Conditions
    - (ii) Lens/Corneal Relationship
    - (iii) Lacrimal System/Function
    - (iv) Eyelid/Lens Relationship
  5. Pathology of the Eye:
    - (i) Conditions
    - (ii) Diseases
  6. Chemistry:
    - (i) Lens Materials
      - (I) Wettability
      - (II) Permeability

(Rule 0480-01-.14, continued)

- (ii) Solutions
- (iii) Cosmetics
- (iv) Medications
- 7. Basic Science and Fitting of Contact Lens
- 8. Contact Lens Optics and Application:
  - (i) Keratometry
  - (ii) Reflection
  - (iii) Refraction
  - (iv) Prism
  - (v) Aberration
  - (vi) Magnification
  - (vii) Radius of Curvature
  - (viii) Diameter
  - (ix) Optical Zone
  - (x) Vault (Sagittal Depth)
  - (xi) Index of Refraction
  - (xii) Vertex Distance
- 9. Hygienic Conditions and Practice
- 10. Equipment and Instrumentation:
  - (i) Keratometer
  - (ii) Biomicroscope (Slit Lamp)
    - (I) Methods of Illumination - Use of Flourescein
    - (II) Burton Lamp
    - (III) Vertometer (Lensometer)
    - (IV) Radiuscope
    - (V) Diameter and Thickness Gauge
    - (VI) Calipers
    - (VII) Millimeter Rule

(Rule 0480-01-.14, continued)

- (VIII) 7x or 8x Magnifier
  - (IX) Diopter to Millimeter Conversion Table
  - (X) Vertex Conversion Table
  - (XI) Light Source
  - (XII) Cleaning and Sterilization Equipment
11. Lens Design
  12. Fitting Methodology and Theory
  13. Indications for Use
  14. Contraindications for Use
  15. Follow-up Procedures:
    - (i) Subjective and Objective Findings
    - (ii) Modification/Adjustment Techniques
  16. Complications - Recognition and Referral of Conditions Requiring Medical Attention
  17. Inventory Management
  18. Industry Standards (Z80 ANSI Standards)
  19. State and Federal Laws
  20. Physician/Technician Protocol and Responsibilities
  21. Other Related Concepts:
    - (i) Basic Mathematics and Science
    - (ii) Public Relations
    - (iii) Sales
    - (iv) Accounting
    - (v) Management
- (c) It is recommended the work place where the apprenticeship training is taking place have the following minimum equipment:
1. For spectacle dispensing:
    - (i) One (1) fitting table with two (2) charts or two (2) stools
    - (ii) One (1) mirror

(Rule 0480-01-.14, continued)

- (iii) One (1) set of hand tools, including but not limited to, assorted anvils, files, pliers, reamers, screwdrivers, taps and wrenches
  - (iv) One (1) frame warmer
  - (v) One (1) Lensometer or Vertometer
  - (vi) One (1) Pupilometer or other P.D. gauge
  - (vii) One (1) set of calipers or other thickness gauge
  - (viii) One (1) clock or lens measure
  - (ix) One (1) penlight
  - (x) Handstone or other edging equipment to shape lenses
  - (xi) Polishing and buffing wheel/lathe
  - (xii) 7 inch rulers marked in millimeters
  - (xiii) Polariscope
  - (xiv) Coating Unit
  - (xv) Dye Facilities
  - (xvi) Groover
  - (xvii) One hundred fifty (150) sample frames
  - (xviii) Current copy of Z-80 ANSI standards of eyewear
  - (xix) Current copies of Tennessee Law and Rules and Regulations governing dispensing of vision correction devices
2. For contact lens dispensing
- (i) Slit Lamp
  - (ii) Keratometer or Ophthalmometer
  - (iii) Topogometer
  - (iv) Burton Lamp
  - (v) Calipers
  - (vi) Millimeter rule
  - (vii) Lensometer/Lensmeter
  - (viii) Radiuscope
  - (ix) Diameter Gauge

(Rule 0480-01-.14, continued)

- (x) Thickness Gauge
- (xi) Hand-held 7x or 8x magnifier reticle with millimeter rule
- (xii) Modification Tools
- (xiii) Cleaning and Sterilization Equipment
- (xiv) Vertex Conversion Tables
- (xv) Diopters to Millimeters Conversion Tables.
- (xvi) Current copies of Z-80 ANSI standards
- (xvii) Current copies of Tennessee Law and Rules and Regulations governing dispensing of Contact Lenses

**Authority:** T.C.A. §§4-4-5-202, 4-5-204, 63-14-101, and 63-14-103. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed June 2, 2004; effective August 16, 2004. Amendment filed October 18, 2005; effective January 1, 2006. Amendment filed April 11, 2007; effective June 25, 2007. Amendment filed March 27, 2009; effective June 10, 2009.

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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)
Donald L. Wells	X				
LeRhonda Walton-Hill	X				
Kathy Hawkins	X				
Kimberly A. Jackson	X				
Felda Stacey	X				
Edward Risby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Dispensing Opticians (board/commission/ other authority) on 02/04/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/8/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 02/04/14 (mm/dd/yy)

Date: March 13, 2015

Signature: [Handwritten Signature]

Name of Officer: Matthew Gibbs

Assistant General Counsel

Title of Officer: Department of Health

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

Notary Public Signature: [Handwritten Signature]

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

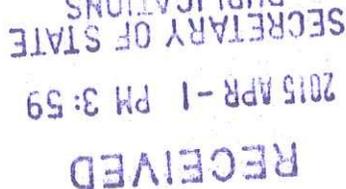


All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
 Herbert H. Slatery III  
 Attorney General and Reporter  
3/30/2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 4/1/15  
 Effective on: 6/30/15



[Handwritten Signature]  
 Tre Hargett  
 Secretary of State

**RULES  
OF  
THE TENNESSEE BOARD OF DISPENSING OPTICIANS**

**CHAPTER 0480-01  
GENERAL RULES GOVERNING DISPENSING OPTICIANS**

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**0480-01-.01 DEFINITIONS.** As used in these rules, the terms and acronyms shall have the following meanings ascribed to them:

- (1) Advertising - Includes, but is not limited to, business solicitations, with or without limiting qualifications, by a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual, radio, video, or television broadcasting or any other means designed to secure public attention.
- (2) Applicant - Any individual seeking licensure by the Board and who has submitted an official application and paid the application fee.
- (3) Board - The Board of Dispensing Opticians.
- (4) Board administrative office - The office of the administrator assigned to the board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (5) Board Designee - Any person who has received a written delegation of authority from the board to perform Board functions subject to review and ratification by the full Board where provided by these rules.
- (6) Closed File - An administrative action which renders an incomplete or denied file inactive.
- (7) Department - Tennessee Department of Health.
- (8) Direct Supervision – The requirement that the supervising licensed dispensing optician, optometrist, or ophthalmologist direct, coordinate, review, inspect, and approve acts or services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.
- (9) Dispensing Optician – A person holding a current, valid license issued by the Board that authorizes that person to engage in the practice of optical dispensing.
- (910) Division - The Division of Health Related Boards, Department of Health, from which the Board receives administrative support.

(Rule 0480-01-.01, continued)

- (4011) Examination Service - The testing service whose written examination has been adopted by the Board.
- (4112) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; a payment required of an applicant or licensee pertaining to the application or license.
- (4213) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for rendering services.
- (4314) Good Moral Character - The quality of being well regarded in personal behavior and professional ethics.
- (4415) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (4516) HRB - When the acronym HRB appears in the text of these rules, it represents Health Related Boards.
- (4617) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.
- (18) Optical Dispensing – The design, verification and delivery to the intended wearer of lenses, frames, and other specially fabricated optical devices upon prescription.
- (4719) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (4820) Recognized educational institution - Any educational institution that is accredited by a nationally or regionally recognized educational body or is approved by the board.
- (4921) Registrant - Any person who has been lawfully issued a license.
- (2022) Use a title or description of - To hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards, or other instruments of professional identification.
- (2123) Written evidence - Includes, but is not limited to, verification from supervisors or other professional colleagues familiar with the applicant's work.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-118, 63-14-101, 63-14-102, 63-14-103, 63-14-106, and 63-14-107. **Administrative History:** Original rule certified June 7, 1974. Amendment filed November 25, 1986; effective January 9, 1987. Repeal and new rule filed August 2, 1995; effective October 16, 1995. Amendment filed August 7, 1997; effective October 27, 1997. Amendment filed May 6, 2002; effective July 20, 2002. Amendment filed March 27, 2009; effective June 10, 2009.

#### 0480-01-.02 SCOPE OF PRACTICE.

- ~~(1) The practice of dispensing opticians includes the preparation, adaptation and dispensing of lenses, spectacles, eye glasses and optical devices on the written prescription of an optometrist or a physician.~~
- (1) The practice of optical dispensing includes the preparation, adaptation and dispensing of lenses, spectacles, eye glasses and optical devices on the written prescription of an

(Rule 0480-01-.02, continued)

optometrist or a physician including the interpretation of written prescriptions and the transposing of prescriptions.

- (2) Nothing contained in these rules shall be construed to permit persons licensed under T.C.A. §§63-14-101 through 63-14-121 to examine or exercise eyes, nor to diagnose, treat, or prescribe for any human injury, disease or ailment.
- (3) Dispensing opticians may fit contact lenses only in the presence of and under the direct supervision of a licensed optometrist or ophthalmologist.
- (4) ~~Nothing shall~~ Nothing in this section or in this chapter shall be construed to require the licensing of persons, firms or corporations which are wholesale suppliers to opticians, optometrists or ophthalmologists, of lenses, spectacles, eye glasses or optical devices, or to prevent such persons, firms or corporations from the preparation of lenses, spectacles, eye glasses or optical devices, defined to be the surfacing, fabrication, or finishing of any substance or material used or to be used for the correction of human vision, or the adaptation of such lenses, spectacles, eye glasses or optical devices, defined to be the mounting of such a prepared substance or material to frames or to other devices designed to be worn by the user thereof, as long as such preparation or adaptation is done under the written order of an ophthalmologist or optometrist only, and as long as such lenses, spectacles, eye glasses or optical devices so prepared or adapted are delivered directly to the office of an ophthalmologist, optometrist or dispensing optician, and as long as such persons, firms or corporations do not engage in advertising as to the price of either the finished product or any part thereof.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-102, and 63-14-103. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995.

#### 0480-01-.03 NECESSITY OF LICENSURE.

- (1) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 14 of the Tennessee Code Annotated to represent himself as a dispensing optician or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcement, telephone listings, calling cards, or other instruments of professional identification.
- (2) Dispensing Optician is one of the healing arts, and as such the practice of which is restricted to those persons credentialed by the board. Persons engaging in the practice of dispensing optician without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.
- (3) No person shall hold himself out to the public by a title or description of services incorporating the words "dispensing optician", nor shall state or imply that he is licensed as such, unless such person is licensed or expressly exempted pursuant to T.C.A. §§ 63-14-101, et. seq.
- (4) Use of Titles – Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Licensed Dispensing Optician" and to engage in the practice of dispensing opticians, as defined in T.C.A. § 63-14-102. Any person licensed by the Board to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0480-01-.20(2)(a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the dispensing optician to disciplinary action pursuant to T.C.A. § 63-14-104(2).

(Rule 0480-01-.11, continued)

- (a) Request in writing from the board's administrative office an affidavit of retirement form.
  - (b) Complete and submit the affidavit affirming that, while in retired status, the licensee will not practice or in any way indicate or imply that he holds an active Tennessee licensee or use within the State of Tennessee any words, letters, titles, or figures which indicate or imply that he is a licensed dispensing optician.
- (3) A person who holds a retired license may apply to reactivate his license in the following manner:
- (a) Submit a written request to the board's administrative office for licensure reactivation;
  - (b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 0480-01-.06. If retirement was pursuant to Rule 0480-01-.09, and reactivation was requested prior to the expiration of one year from the date of retirement, the Board may require payment of the late renewal fee, past due renewal fees, and state regulatory fees as provided in Rule 0480-01-.06; and (c) Submit evidence of compliance with the continuing education provisions of Rule 0480-01-.12. Each individual is responsible for maintaining continuing education documentation until such time as he applies for reinstatement.
- (4) Upon receipt of the reinstatement application, fees, and continuing education documentation, the Board shall consider the reinstatement application.
- (5) The Board shall require an applicant whose license has been revoked, suspended, or retired for a period of three (3) or more years to apply, take and pass the examinations, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

**Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed October 18, 2005; effective January 1, 2006.

#### 0480-01-.12 CONTINUING EDUCATION (CE).

- (1) Basic Requirements
  - (a) Each person licensed by the Board is required to complete eight (8) clock hours of continuing education during each calendar year which shall include: ~~CE requirements will be set each January by the board and licensees will be notified in writing, four (4) hours in spectacles, two (2) hours in contact lenses, and two (2) hours in optional courses. Supervisors of apprentices shall fulfill the two (2) optional courses by taking two (2) hours in supervisory courses.~~
  - (b) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.
    1. Documentation must include the date, location, and total time transpired if the continuing education was presented in a traditional format

(Rule 0480-01-.12, continued)

2. Documentation must include proof of successful completion of a written post-course examination to evaluate material retention if the course was presented in a multi-media format.
- (c) The licensee must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the licensee's attendance or original letters from course providers are such evidence.
  - (d) For new licensees, submitting proof of successful completion of a two (2) year course of study in opticianry in a college level program recognized and approved by the Board, pursuant to rule 0480-01-.04 (3) (b), or submitting proof of successful completion of a three (3) year training program, pursuant to rule 0480-01-.04 (3) (c), shall be considered proof of sufficient preparatory education to constitute continuing education clock hour credit for the calendar year in which the applicant is approved.
- (2) Acceptable Continuing Education - Traditional Formats
- (a) The Board will accept any dispensing optician clinic, workshop, seminar or lecture attended in Tennessee or attended at any national or regional meeting not in Tennessee for continuing education (CE) credit if it is in accordance with the following guidelines:
    - (b) The subject matter must fall within the limit of subjects approved by the Board.
    - (c) Registrants, instructors and panelists will be eligible for credit.
    - (d) CE will be awarded on the following basis:
      1. Any single session covering not less than 2-1/2 hours will be assigned 3 hours of CE.
      2. Any single session covering not less than 1 hour, 40 minutes will be assigned 2 hours of CE.
      3. Any single session covering not less than 50 minutes will be assigned 1 hour of CE.
      4. The hours shall be based on actual instruction or program time, excluding registration time and coffee breaks, but including question and answer periods;
      5. The total credits to be earned in any single 24 hour period cannot exceed 12;
      6. Course approval procedure for course providers - The subject matter, instructor and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
        - (i) a course content description or outline.
        - (ii) names of all lecturers.
        - (iii) brief resume of all lecturers.

(Rule 0480-01-.12, continued)

- (iv) number of hours of educational credit requested.
  - (v) dates, locations and hours of course.
  - (vi) copies of materials to be utilized in the course.
  - (vii) how verification of continuous attendance is to be documented.
  - (viii) how notification to every Tennessee licensed dispensing optician is to be accomplished.
  - (ix) documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (e) Under no circumstances shall continuing education courses be approved if the materials required by subparts (2) (d) 6. (i) - (ix) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board at which approval is sought that precedes the course.
- (f) Notwithstanding the provisions of subparagraph (a), out-of-state continuing education providers may seek course approval if they are a dispensing optician regulatory agency or association from a state that borders Tennessee.
- (g) Course approval procedure for individual licensees
1. Notwithstanding the provisions of subparagraph (a), any licensee may seek approval to receive credit for successfully completing continuing education courses by complying with the provisions of part (2) (d) 6., subparts (2) (d) 6. (i) through (vii) and subpart (2) (d) 6. (ix).
  2. To retain course approval, the licensee must submit a course evaluation form, supplied by the Board, to the Board's administrative office within thirty (30) days after successfully completing the course.
- (3) Acceptable Continuing Education - Multi-Media Formats
- (a) The Board will accept no more than two (2) hours of the annual requirement as provided in subparagraph (1) (a) in Multi-Media formats for continuing education (CE) credit if it is in accordance with the following guidelines:
1. Under no circumstances shall Multi-Media format continuing education courses be approved for course providers or awarded CE credit for individual licensees if the materials required by subparagraphs (3) (b) or (3) (c) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course.

(Rule 0480-01-.12, continued)

2. The number of CE hours awarded for any course shall be determined by the Board during the course approval procedure as provided in subparagraphs (3) (b) or (3) (c).
  3. The licensee must successfully complete a written post-course examination to evaluate material retention.
- (b) Course approval procedure for course providers - The subject matter, instructor/author and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
1. a course content description or outline.
  2. names of all lecturers/authors.
  3. brief resume of all lecturers/authors.
  4. number of hours of educational credit requested.
  5. copies of materials to be utilized in the course.
  6. how verification of successful course completion is to be documented.
  7. how notification to every Tennessee licensed dispensing optician is to be accomplished.
  8. documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (c) Course approval procedure for individual licensees - Any licensee may seek approval to receive credit for successfully completing Multi-media format continuing education courses by submitting the documentation required in parts (3) (b) 1. through 5. and part (3) (b) 8.
- (d) Multi-Media courses may include courses utilizing:
1. The Internet
  2. Interactive Teleconferencing
  3. Interactive Videoconferencing
- (4) Violations

(Rule 0480-01-.12, continued)

- (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
  - (b) 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.
  - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (34) (b) above may be subject to disciplinary action.
  - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.
- (5) Continuing Education for Reactivation of License
- (a) For Reactivation of retired licensure
    1. An individual whose license has been retired for three (3) years or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period. An individual whose license has been retired for more than three (3) years shall apply, take and pass the examinations as required by the Board, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.
    2. Any individual requesting reactivation of a license which has been retired must submit along with the reactivation request, verification which indicates the attendance and completion of hours of continuing education which must have been begun and successfully completed within 6 months immediately preceding the date of requested reinstatement. The continuing education hours completed to reinstate a retired license shall not be credited toward the continuing education hours required to be completed by the end of the calendar year following reinstatement.
    3. The Board, upon receipt of a written request and explanation, may waive or condition any or all of the continuing education required for reactivation of a retired certificate or license in emergency situations.
  - (b) For reactivation of revoked licensure - No person whose license has been revoked for failure to comply with continuing education may be reinstated without complying with the requirements. Continuing education will accumulate at the same rate as for those licenses which are active. The required clock hours of continuing education must have been begun and successfully completed within six (6) months immediately following the date of revocation or suspension. A license which has been revoked for noncompliance with the CE requirements shall also be subject to the renewal late fee pursuant to rule 0480-01-.06.
  - (c) For reactivation of expired licensure - No person whose license has expired may be reinstated without submitting evidence of continuing education. The continuing

(Rule 0480-01-.12, continued)

education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been successfully completed within six (6) months immediately preceding the date of reinstatement.

- (d) Continuing education hours obtained as a prerequisite for reactivating a license may not be counted toward the calendar year requirement.

(6) Waiver of Continuing Education

- (a) The Board may grant a waiver to certify attendance and completion of the required hours of continuing education, if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the individual, i.e., disability, residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.
- (b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board administrative office.
  - 1. A written request for a waiver which specifies what requirement is sought to be waived and a written and signed explanation of the reasons for the request.
  - 2. Any documentation which supports the reason for the waiver requested or which may be subsequently requested by the board.
- (c) A waiver approved by the Board is effective for only the calendar year for which the waiver of the requirement is sought, unless otherwise specified in writing by the Board.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-14-101, 63-14-103, 63-14-104, 63-14-106, 63-14-107, and 63-14-111. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed August 7, 1997; effective October 27, 1997. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed May 6, 2002; effective July 20, 2002. Amendment filed May 12, 2003; effective July 26, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 18, 2005; effective January 1, 2006.

**0480-01-.13 CODE OF ETHICS.**

- (1) The following code of ethics shall govern the conduct of licensed dispensing opticians in the practice of opticianry.
  - (a) Keep the visual welfare of the consumer upper-most at all times.
  - (b) Promote in every possible way the better care of the visual needs of the citizens of this state.
  - (c) Continuously enhance their educational and technical proficiency so that their customers shall receive the benefits of all knowledge and improvements in visual care.
  - (d) Insure that no person shall lack the necessary information on visual care regardless of the financial status of the person.
  - (e) Conduct themselves as an exemplary citizen.

(Rule 0480-01-.13, continued)

- (o) Engaging in fraud, deception, misrepresentation, false promise or false pretense in the practice of opticianry.
- (p) Fraudulently altering patient/customer records.
- (q) Practicing opticianry while the ability to practice is impaired by alcohol, drugs, physical disability or mental disability.
- (r) Abuse of a consumer or sexual misconduct with a consumer.
- (s) Knowingly engaging in a practice involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public safety.
- (t) Refusing to provide goods or services to a person because of such person's race, creed, color, or national origin.
- (u) Preparing, adapting or dispensing lenses, spectacles, eye glasses, or optical devices that are not of good workmanship or do not meet the standards set out in the American National Standard for Ophthalmics - Prescription Ophthalmic Lenses - Recommendations (ANSI Z-80.1-1987 edition).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-14-101, 63-14-102, 63-14-103, 63-14-104, and 63-14-111. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995.

#### 0480-01-.14 APPRENTICESHIP TRAINING PROGRAM.

- (1) Any person wishing to practice the profession of dispensing opticianry and who intends to fulfill the education and training requirements via the apprenticeship provision shall make application to and register with the Board pursuant to T.C.A. § 63-14-103(a)(1) and (f).
  - (a) The apprentice shall designate, in the application, a supervising dispensing optician, optometrist or ophthalmologist, and an alternate supervisor. The Board administrator shall notify the apprentice when the supervisor, alternate supervisor, training program, and training setting have been approved.
  - (b) The Board administrator shall notify the apprentice of the training program start date.
  - (c) Except as provided in Rule 0480-01-.04(3), only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (2) ~~Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state for at least three (3) years and whose license to practice in Tennessee is current, undisciplined, unrestricted and unencumbered.~~
  - (2) Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state and whose license to practice in Tennessee is current, undisciplined and unrestricted.
    - (a) The supervisor shall work at the premises where the apprenticeship training is conducted.
    - (b) The supervisor shall provide direct supervision at all times in accordance with T.C.A. § 63-14-103(a) and (f) and rule 0480-01-.01(8).

(Rule 0480-01-.14, continued)

- (3) Changes in the information provided in the original apprentice application shall be reported to the Board in writing within 30 days of such change.
- (4) Length of Training Program - Pursuant to T.C.A. § 63-14-103(a)(1), the period of apprenticeship training ~~must be~~ shall be not less than a minimum of three (3) years and no more than six (6) years and must include a total of five thousand two hundred and fifty (5250) hours of full time or part time education and training under qualified supervision. If the apprenticeship is not completed within a maximum of six (6) years, the applicant shall be required to start the apprenticeship program from the beginning.
  - (a) Full Time - Full time work is defined as fifty (50) weeks of at least thirty-five (35) hours per week or one thousand, seven hundred and fifty (1,750) hours per year.
  - (b) Part Time - Any part time work must be at least ~~one thousand five hundred (1,000)~~ 500 hours per year to count toward the ~~three (3)-year~~ five thousand two hundred and fifty (5,250) hour requirement.
  - (c) Optical Laboratory Work - No more than one (1) year / one thousand seven hundred and fifty (1,750) hours of credit will be allowed for experience obtained in an optical laboratory under supervision of a licensed eye care professional.
  - (d) Rescinding of Approval of Training Program
    1. The Board may rescind its approval of any apprenticeship training program if it determines that the facilities and equipment available to the apprentice are not adequate or when the apprentice is not being properly trained or supervised.
    2. The Board may rescind its approval of any apprenticeship training program if it determines that the apprentice is not actively pursuing licensure including, but not limited to, working less than one thousand (1000) hours per year as provided in subparagraph (4) (b), and failing to file semi-annual evaluation reports in a timely manner as provided in subparagraph (5) (c).
    3. If the Board rescinds its approval of an apprenticeship training program, the apprentice may no longer work or train as a dispensing optician. To continue training, the apprentice must apply to the Board and register for a new apprenticeship training program and must begin a new three (3) year / five thousand two hundred and fifty (5250) hour apprenticeship as provided in this rule.
- (5) Supervision
  - (a) Limitations
    1. A licensed dispensing optician may supervise no more than two (2) apprentices concurrently.
    2. A licensed dispensing optician may provide supervision in the temporary and impermanent absence (a.k.a. alternate supervision) of the supervising licensee to one (1) of the two (2) apprentices being supervised concurrently.
    3. The Board will disallow the apprenticeship training of an apprentice whose supervisor is supervising more than two (2) apprentices concurrently. Such training shall not be considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.

(Rule 0480-01-.14, continued)

- (b) The apprentice shall function under the direct supervision of a sponsoring/designated licensed supervisor who must be working in the same premises where the apprenticeship training is conducted and must be present at all times (T.C.A. § 63-14-103).
- (c) The filing of semi-annual evaluation reports for each apprentice under the direct supervision of a licensed eye care professional is mandatory. The appropriate form will be supplied by the Board and shall be notarized before submission. Semi-annual evaluation periods begin 6 months from initial registration and each 6 months thereafter until licensure as a dispensing optician has been achieved.
  - 1. The semi-annual evaluation report must be received in the Board's administrative office no later than thirty (30) days after the six (6) month training period has ended or the training period shall be disallowed and not considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
  - 2. If two (2) semi-annual evaluation reports are not received by the Board's administrative office within thirty (30) days after the applicable training periods have ended, the Board will rescind its approval of the apprenticeship training program. The apprentice will not receive credit for the two (2) training periods for which the semi-annual evaluation reports were not submitted or were received by the Board's administrative office later than thirty (30) days after the applicable training period. In order to continue the apprenticeship training program, a new application for an apprenticeship training program must be submitted.
- (6) The Apprenticeship Registration does not permit or empower the apprentice to practice as a Dispensing Optician during the absence of the sponsoring/designated licensed supervisor under whose supervision he or she is registered.
  - (a) Apprentice training for spectacle dispensing must include, but is not limited to the following subjects:
    - 1. Optical Terminology
    - 2. Anatomy of the Eye
    - 3. Physiology of the Eye
    - 4. Optical Concepts, Light Theory
    - 5. Lens power (Meridians of Power)
    - 6. Lens Form and Analysis, Transposition
    - 7. Base Curve, Radius of Curvature
    - 8. Prism and its Effect
    - 9. Lens Types and Materials
    - 10. Frame Styles, Sizes and Materials
    - 11. Instrumentation
    - 12. Prescription Analysis

(Rule 0480-01-.14, continued)

13. Fitting of Eyewear
14. Ordering of Eyewear
15. Verification of Parameters
16. Bench Adjustment
17. Final Personal Adjustment/Alignment
18. Delivery Procedures
19. Laboratory Procedures:
  - (i) Blank Size
  - (ii) Patterns
  - (iii) Layout
  - (iv) Blocking
  - (v) Edging
  - (vi) Deblocking
  - (vii) Hand Edging
  - (viii) Grooving
  - (ix) Coatings
  - (x) Filters
  - (xi) Tints
  - (xii) Engraving
  - (xiii) Heat and Chemical Treating
  - (xiv) Testing for Impact Resistance
  - (xv) Mounting
  - (xvi) Alignment
  - (xvii) Inspection
  - (xviii) Verification
20. Repair, Replacement, Realignment
21. Subnormal Vision Aids
22. Inventory Management

(Rule 0480-01-.14, continued)

23. Industry Standards (Z80 ANSI Standards)
  24. State and Federal Laws
  25. Physician/Technician Protocol and Relationships
  26. Other Related Concepts:
    - (i) Basic Mathematics and Science
    - (ii) Public Relations
    - (iii) Sales
    - (iv) Accounting
    - (v) Management
- (b) Apprenticeship training for contact lens dispensing must include, but is not limited to, these subjects:
1. Optical and Contact Lens Terminology
  2. History of Contact Lens
  3. Anatomy of the Eye:
    - (i) Structure of the Cornea
    - (ii) Topography
  4. Physiology of the Eye:
    - (i) Conditions
    - (ii) Lens/Corneal Relationship
    - (iii) Lacrimal System/Function
    - (iv) Eyelid/Lens Relationship
  5. Pathology of the Eye:
    - (i) Conditions
    - (ii) Diseases
  6. Chemistry:
    - (i) Lens Materials
      - (I) Wettability
      - (II) Permeability

(Rule 0480-01-.14, continued)

- (ii) Solutions
  - (iii) Cosmetics
  - (iv) Medications
7. Basic Science and Fitting of Contact Lens
8. Contact Lens Optics and Application:
- (i) Keratometry
  - (ii) Reflection
  - (iii) Refraction
  - (iv) Prism
  - (v) Aberration
  - (vi) Magnification
  - (vii) Radius of Curvature
  - (viii) Diameter
  - (ix) Optical Zone
  - (x) Vault (Sagittal Depth)
  - (xi) Index of Refraction
  - (xii) Vertex Distance
9. Hygienic Conditions and Practice
10. Equipment and Instrumentation:
- (i) Keratometer
  - (ii) Biomicroscope (Slit Lamp)
    - (I) Methods of Illumination - Use of Flourescein
    - (II) Burton Lamp
    - (III) Vertometer (Lensometer)
    - (IV) Radiuscope
    - (V) Diameter and Thickness Gauge
    - (VI) Calipers
    - (VII) Millimeter Rule

(Rule 0480-01-.14, continued)

- (VIII) 7x or 8x Magnifier
  - (IX) Diopter to Millimeter Conversion Table
  - (X) Vertex Conversion Table
  - (XI) Light Source
  - (XII) Cleaning and Sterilization Equipment
11. Lens Design
  12. Fitting Methodology and Theory
  13. Indications for Use
  14. Contraindications for Use
  15. Follow-up Procedures:
    - (i) Subjective and Objective Findings
    - (ii) Modification/Adjustment Techniques
  16. Complications - Recognition and Referral of Conditions Requiring Medical Attention
  17. Inventory Management
  18. Industry Standards (Z80 ANSI Standards)
  19. State and Federal Laws
  20. Physician/Technician Protocol and Responsibilities
  21. Other Related Concepts:
    - (i) Basic Mathematics and Science
    - (ii) Public Relations
    - (iii) Sales
    - (iv) Accounting
    - (v) Management
- (c) It is recommended the work place where the apprenticeship training is taking place have the following minimum equipment:
1. For spectacle dispensing:
    - (i) One (1) fitting table with two (2) charts or two (2) stools
    - (ii) One (1) mirror

(Rule 0480-01-.14, continued)

- (iii) One (1) set of hand tools, including but not limited to, assorted anvils, files, pliers, reamers, screwdrivers, taps and wrenches
  - (iv) One (1) frame warmer
  - (v) One (1) Lensometer or Vertometer
  - (vi) One (1) Pupilometer or other P.D. gauge
  - (vii) One (1) set of calipers or other thickness gauge
  - (viii) One (1) clock or lens measure
  - (ix) One (1) penlight
  - (x) Handstone or other edging equipment to shape lenses
  - (xi) Polishing and buffing wheel/lathe
  - (xii) 7 inch rulers marked in millimeters
  - (xiii) Polariscope
  - (xiv) Coating Unit
  - (xv) Dye Facilities
  - (xvi) Groover
  - (xvii) One hundred fifty (150) sample frames
  - (xviii) Current copy of Z-80 ANSI standards of eyewear
  - (xix) Current copies of Tennessee Law and Rules and Regulations governing dispensing of vision correction devices
2. For contact lens dispensing
- (i) Slit Lamp
  - (ii) Keratometer or Ophthalmometer
  - (iii) Topogometer
  - (iv) Burton Lamp
  - (v) Calipers
  - (vi) Millimeter rule
  - (vii) Lensometer/Lensmeter
  - (viii) Radiuscope
  - (ix) Diameter Gauge

(Rule 0480-01-.14, continued)

- (x) Thickness Gauge
- (xi) Hand-held 7x or 8x magnifier reticle with millimeter rule
- (xii) Modification Tools
- (xiii) Cleaning and Sterilization Equipment
- (xiv) Vertex Conversion Tables
- (xv) Diopters to Millimeters Conversion Tables.
- (xvi) Current copies of Z-80 ANSI standards
- (xvii) Current copies of Tennessee Law and Rules and Regulations governing dispensing of Contact Lenses

**Authority:** T.C.A. §§4-4-5-202, 4-5-204, 63-14-101, and 63-14-103. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed June 2, 2004; effective August 16, 2004. Amendment filed October 18, 2005; effective January 1, 2006. Amendment filed April 11, 2007; effective June 25, 2007. Amendment filed March 27, 2009; effective June 10, 2009.

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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)
Donald L. Wells	X				
LeRhonda Walton-Hill	X				
Kathy Hawkins	X				
Kimberly A. Jackson	X				
Felda Stacey	X				
Edward Risby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Dispensing Opticians (board/commission/ other authority) on 02/04/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/8/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 02/04/14 (mm/dd/yy)

Date: March 13, 2015

Signature: [Handwritten Signature]

Name of Officer: Matthew Gibbs

Assistant General Counsel

Title of Officer: Department of Health

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

Notary Public Signature: [Handwritten Signature]

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

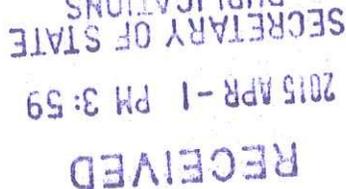


All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
 Herbert H. Slatery III  
 Attorney General and Reporter  
3/30/2015  
 Date

**Department of State Use Only**

Filed with the Department of State on: 4/1/15  
 Effective on: 6/30/15



[Handwritten Signature]  
 Tre Hargett  
 Secretary of State

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

<u>BOARD:</u>	Tennessee State Board of Education
<u>SUBJECT:</u>	Grading
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-1-302
<u>EFFECTIVE DATES:</u>	July 5, 2015 through June 30, 2016
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The rules provide guidance for the calculation of grade point averages. Specifically, the rules address rounding of fractional numbers, when to add weighted numbers for honors courses, use of a 4.0 scale, exclusion of initial failing grades when a course is repeated, reporting, and monitoring.</p> <p>The rules also authorize the addition of four percentage points to grades used to calculate a student's semester average for statewide dual credit courses. A statewide dual credit course is an existing high school course that incorporates postsecondary learning objectives and is aligned with an approved dual credit challenge exam.</p>

**Regulatory Flexibility Addendum**

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

Not applicable.

### **Impact on Local Governments**

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

This rule will have no impact on local governments.

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Sequence Number: 04-07-15  
 Rule ID(s): 5931  
 File Date: 4/6/15  
 Effective Date: 7/5/15

## 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.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Angela C. Sanders
<b>Address:</b>	1 <sup>st</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.05	State Curriculum, Requirement D

Minimum Requirements for the Approval of Public Schools  
0520-01-03

(3) Grading and Promotion.

- (a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades ~~7-12~~seven through twelve (7-12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.
- (b) Local school systems shall develop and implement grading, promotion, and retention policies for grades ~~K-8~~kindergarten through eight (K-8). The policies shall be communicated annually to students and parents.
- (c) Local school systems shall use the following uniform grading system for students enrolled in grades nine through twelve (9-12). Students' grades shall be reported for the purposes of application for postsecondary financial assistance administered by the Tennessee Student Assistance Corporation using the uniform grading system.

<b>Uniform Grading System – <u>Weighting for Advanced Coursework</u></b>				
Grade	<u>Percentage%</u> Range	<u>Weighting for Honors Courses &amp; National Industry Certification</u>	<u>Statewide Dual Credit Courses</u>	<u>Weighting for Advanced Placement &amp; International Baccalaureate Courses</u>
A	93 – 100	May include the addition of <u>three (3)</u> percentage points to the grades used to calculate the semester average.	<u>May include the addition of four (4) percentage points to the grades used to calculate the semester average.</u>	May include the addition of <u>five (5)</u> percentage points to the grades used to calculate the semester average.
B	85 – 92			
C	75 – 84			
D	70 – 74			
F	0 – 69			

Assigning additional quality points above 4.0 for honors courses, AP, IB, and National Industry Certification courses is not allowed for the purpose of determining eligibility for the lottery scholarships.

All course types, as defined below, shall be used for reporting student grades for the determination of eligibility for HOPE scholarships.

- (d) ~~State approved courses.~~ State approved courses shall meet all appropriate content standards, learning expectations, and performance indicators as approved by the State Board of Education and are eligible for the points listed above.
- (e) ~~Honors Courses and National Industry Certification courses.~~ Local education agencies may elect to offer honors courses and National Industry Certification (NIC) courses. Local educational agencies electing to offer honors courses will ensure that the approved honors

courses substantially exceed the content standards, learning expectations, and performance indicators as approved by the State Board of Education. Further, each local education agency offering honors courses will ensure that additional rigor is being provided by implementing the framework of standards for honors courses listed below:

1. ~~Framework of Standards for Honors Courses~~. Honors courses will substantially exceed the content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self-directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed-response prompts, performance-based tasks, open-ended questions, essays, original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five (5) of the following components:
  - (i) Extended reading assignments that connect with the specified curriculum.
  - (ii) Research-based writing assignments that address and extend the course curriculum.
  - (iii) Projects that apply course curriculum to relevant or real-world situations. These may include oral presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.
  - (iv) Open-ended investigations in which the student selects the questions and designs the research.
  - (v) Writing assignments that demonstrate a variety of modes, purposes, and styles.
    - (I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.
    - (II) Examples of purpose include to inform, entertain, and persuade.
    - (III) Examples of style include formal, informal, literary, analytical, and technical.
  - (vi) Integration of appropriate technology into the course of study.
  - (vii) Deeper exploration of the culture, values, and history of the discipline.
  - (viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.
  - (ix) Job shadowing experiences with presentations which connect class study to the world of work.

All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.

Career and technical courses that offer a National Industry Certification through a

nationally recognized examination may be weighted by adding three (3) points to all grades used to calculate the semester average.

If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.

Each local education agency shall adopt policies for honors courses and career and technical courses that offer national industry certification that may allow for the addition of three (3) points to all grades used to calculate the semester average.

2. A statewide dual credit course is an existing high school course that incorporates postsecondary learning objectives and is aligned with an approved dual credit challenge exam. Students who pass these challenge exams will earn college credit accepted by all Tennessee public postsecondary institutions. Local education agencies must ensure all statewide dual credit courses incorporate the postsecondary learning objectives and that all students sit for the challenge exam. The courses must provide advanced learning opportunities for students. Local education agencies will also ensure that statewide dual credit teachers receive professional development and support to provide the rigorous level of instruction necessary for the courses.

~~3. Advanced Placement Courses and International Baccalaureate Courses.~~ Local education agencies may elect to offer Advanced Placement and International Baccalaureate courses. If Advanced Placement and International Baccalaureate courses are offered, the local education agency shall annually approve a list of such courses. This list of approved courses shall be made readily available to the public. Local education agencies will ensure that approved courses substantially incorporate the learning objectives and course descriptions as defined by the College Board or International Baccalaureate Agency.

Each local education agency shall adopt policies for the approved Advanced Placement courses and International Baccalaureate courses that have end-of-course national examinations that may allow for the addition of five (5) points to all grades used to calculate semester averages. Only Advanced Placement and International Baccalaureate courses that have end-of-course national examinations qualify for the addition of five (5) points.

(f) In order to ensure fidelity to the Uniform Grading System in the calculation of the Grade Point Average (GPA) to be used in the determination of eligibility for the HOPE Scholarship, the following guidance is given for implementation by each Local Education Agency (LEA):

1. When determining the grade to be awarded, numerical averages with a decimal point of .5 or higher shall be rounded up to a whole number and a decimal point of .49 or lower shall not be rounded up. For example, a numerical average in a course of 92.50 shall be rounded up to a 93 and awarded an A for the GPA calculation. Further, a numerical average of 92.49 shall not be rounded up and awarded a 92 or B for the GPA calculation. This methodology shall apply to reporting period grades as well as semester and/or final average grades.

2. The addition of percentage points to weight honors courses, National Industry Certification, statewide dual credit courses, Advanced Placement courses, Cambridge and International Baccalaureate courses should be made at each reporting period as well as to any semester exam or other grade used to determine the semester average. Do not add to the semester or final average since the points are already in the grade.

Example: An AP class where the semester average is calculated by adding each six weeks grade twice and adding the semester exam grade once and dividing by 7:

1 <sup>st</sup> Six Weeks	2 <sup>nd</sup> Six Weeks	3 <sup>rd</sup> Six Weeks	Sem. Exam	Sem. Avg.
88 + 5 = 93	90 + 5 = 95	85 + 5 = 90	89 + 5 = 94	93
93 + 93	+ 95 + 95	+ 90 + 90	+ 94	= 650
Sem. Avg.				= 650 ÷ 7 = 92.8 = 93 = A

3. The Uniform Grading System GPA calculation shall be on a 4.0 scale by assigning the following grade points: A = 4, B = 3, C = 2, D = 1 and F = 0. The GPA is the official method for calculating HOPE Scholarship eligibility, and shall be calculated by multiplying the quality points assigned to each course for the semester, trimester, or final course average (for the block schedule) by the credit available for each course and dividing by the total number of credits available. This calculation shall be based on grades at the end of any semester or trimester, not on a grade that spans the entire school year.

This example represents a student's final average GPA based upon a six-period day with five year-long courses and two semester-long courses

$$\text{GPA} = \frac{\text{Sum of Grade Points for Each Course (per credit)}}{\text{Sum of Credits Available}}$$

$$\text{GPA} = \frac{B+A+A+B+B+B+C = 3(1)+4(1)+4(1)+3(1)+3(1)+3(.5)+2(.5)}{1+1+1+1+1+.5+.5} = \frac{19.5}{6}$$

$$\text{GPA} = \frac{19.5}{6} = 3.25 \text{ GPA}$$

4. For purposes of the HOPE Scholarship Eligibility Grade Point Average, a student may repeat any failed course and the failing grade for the first attempt will not be considered in the HOPE Scholarship Eligibility Grade Point Average calculation. The grade of all repeats of the course shall be counted as part of the HOPE Scholarship Eligibility Grade Point Average. LEAs may allow students to replace failed course grades through credit recovery or similar programs without HOPE Scholarship Eligibility Grade Point Average penalty and is not to be considered a repeat.
5. The GPA shall be reported to the nearest 100<sup>th</sup>. The thousandth digit must be a 5 or higher to round up to the next hundredth. For example, a GPA of 3.296 would round up to 3.30. A GPA of 3.2949 would round down to 3.29.
6. The GPA used to determine eligibility for the HOPE Scholarship shall be reported on the student's transcript as the "Hope Scholarship GPA."

7. The Department of Education will provide guidance for LEAs to insure this rule is implemented uniformly across Tennessee.
8. The Department of Education will monitor the calculation of HOPE Scholarship GPA as part of the routine LEA audits.

\* 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)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 07/25/2014, 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: 2/19/15

Signature: [Handwritten Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director



MY COMMISSION EXPIRES: January 9, 2016

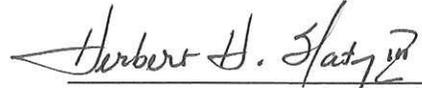
Subscribed and sworn to before me on: 2/23/15

Notary Public Signature: Phyllis E. Childress

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

State Board of Education Rules  
Chapter 0520-01-03 - Minimum Requirements for the Approval of Public Schools  
Rule 0520-01-03-.05 – State Curriculum, Requirement D

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: 4/6/15

Effective on: 7/5/15



Tre Hargett  
Secretary of State

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

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Long-Term Care Programs

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

EFFECTIVE DATES: July 13, 2015 through June 30, 2016

FISCAL IMPACT: None

STAFF RULE ABSTRACT: According to the Department, the rules point out and/or clarify what constitutes a Safety Determination in CHOICES Group 3 that would allow for enrollment in a higher NF LOC (CHOICES 1 or 2 or PACE, etc.).

The rules define "safety determination", specify the criteria that would support review of a safety determination request, establish evidentiary requirements, and provide for request and appeal processes.

The rules also revise the list of eligibility criteria for HCBS in Choices Group 3.

## **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.

Copies of responses to comments are included with filing.



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Marybeth Farringer, Executive Director  
Council on Aging  
95 White Bridge Road  
Nashville, TN 37205

Dear Ms. Farringer:

Thank you for your work in serving older adults and caregivers. Thank you also for your comments regarding the State's proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC).

Certainly, we agree that elder abuse is a critical issue, and one that requires collaborative approaches to help protect Tennessee's most vulnerable citizens, and to ensure the availability of temporary shelter when a person must be removed from their living situation. To that end, the request for placement by law enforcement or APS is critical information that should be provided to TennCare for consideration in the Safety Determination review. In fact, the mere involvement of law enforcement or APS is sufficient for TennCare to conduct a Safety Determination upon request of the submitting entity as reflected in the rule. However, we respectfully disagree that involvement of law enforcement, or a request for placement by law enforcement or APS should automatically result in approval of NF LOC, even for a period of up to 90 days.

NF services are, pursuant to federal law [see 42 U.S. Code § 1396r] provided to persons who require medical or nursing care, rehabilitation services, or health-related care and services (*above the level of room and board*) which can be made available to them *only* through institutional facilities. The benefit is not available simply to provide emergency shelter, even when such housing arrangement may be urgently needed for non-medically related reasons.

Pursuant to Tennessee's established NF LOC criteria, other factors (beyond functional and medical needs) affecting the person's health and safety can and should be taken into account, but cannot and should not replace the person's functional and medical need for such services. The evaluation of these needs is based on an assessment and is reviewed based on supported evidence of the person's medical or functional needs. In short, Medicaid cannot "automatically" approve and provide reimbursement for NF services for any person determined to have experienced or be at risk for abuse or neglect.

Further, neither law enforcement nor APS staff is likely skilled in assessing a person's medical eligibility for LTSS, and law enforcement in particular may be completely unaware of the array of services and supports available to an individual in any of the State's programs. Finally, the availability and willingness of other caregivers who may provide needed assistance would be a significant mitigating factor.

We believe that the changes in the Safety Determination process will help to ensure that NF services are available to persons, including in situations involving elder abuse, when NF services are the most appropriate placement for a person—because the person's functional and medical needs as well as other safety concerns require that level of care.

Again, we appreciate your comments and your continued efforts on behalf of older adults and caregivers. We have attached a tracked changes version of the rule, showing the additional changes that have been made based on public comment. We hope these responses, along with appropriate adjustments in the rule, are helpful.

Respectfully,



Julie Johnson  
Deputy of Operations  
Long Term Services and Supports

CC: Patti Killingsworth, Assistant Commissioner and Chief of Long Term Services and Supports  
Susie Baird, Director of Policy  
Aaron C. Butler, Assistant Director of Policy  
Kristeena Ashby, Assistant Deputy of Operations



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
**BUREAU OF TENNCARE**  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Jesse Samples  
Executive Director  
Tennessee Health Care Association  
2809 Foster Avenue  
Nashville, TN 37210

Dear Mr. Samples:

Thank you for the opportunity to work together for over a year to develop and refine proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC), and for your additional comments on the proposed rule.

With respect to your concerns regarding 1200-13-01-.05(6)—*“in particular the timeframes surrounding appeals of safety determinations and appeals of denials of safety determinations,”* these rules do not impact the timeframes for appeals, including appeals based on a Safety Determination which are governed by federal and state law and regulation as well as federal court orders as elaborated below. The explicit intent of these rules is to make certain improvements in the process by which a Safety Determination is made.

Further we respectfully disagree that the additional time for gathering medical evidence needed to make a Safety Determination could ever result in up to an additional forty (40) days being added to the time allotted to adjudicate a PAE. In most cases, the extension would not exceed 10 business days. If a delay is based on the reasonable needs or request of the Applicant (as documented by the MCO/AAAD), an additional extension may be afforded, not to exceed a total of 30 calendar days (including up to 10 business days already granted) while additional evidence is gathered.

To be clear, any delay (and financial risk) can be avoided altogether by a Nursing Facility’s submission of a complete and accurate PAE, including sufficient medical evidence to make a Safety Determination.

Moreover, we are surprised at this last-minute concern, since THCA had previously expressed its support for and agreement with this provision, which is intended to ensure that TennCare is able to obtain information needed to make a Safety Determination as part of the adjudication of the PAE, rather than forcing such determination into the appeal process, which would delay a decision based on safety.

An April 14, 2014 letter received from Gerald Coggin, Senior Vice President, National HealthCare Corporation; Criss Grant, Director of Planning and Communications, Alexian Brothers PACE; Jesse Samples, Executive Director, Tennessee Health Care Association; Kristin Ware, Attorney and Gordon Bonnyman, Attorney, Tennessee Justice Center; and Carol Westlake, Tennessee Disability Coalition, included the following:

*"c. Doe v. Word does not foreclose the possibility of including a comprehensive safety evaluation in the PAE. Section Two of the Doe Order states that "[w]ritten notice of the Bureau of Medicaid's decision to approve or deny coverage for nursing home care shall be mailed . . . within eight (8) working dates of the receipt of the PAE application.' If a safety determination is a mandatory component of the PAE application, then the application would not be completed or submitted until the safety determination has been made. In fact, this additional information would likely improve the Bureau's ability to make an expedited decision."*

In response to this letter, the tolling of the PAE date for purposes of completing a Safety Determination was proposed in the June 12<sup>th</sup> initial draft of this proposed rule, sent to you and other Stakeholders prior to our scheduled meeting the following day (June 13, 2014).

The group's joint comments on the initial draft of the proposed rule stated the following:

*"As the Bureau has noted, this provision would require a change in the Doe v. Word Consent Decree. We, including the Tennessee Justice Center, do not oppose a change in the Decree to accommodate Safety Determinations. We request that the language be modified to read as follows:*

*and the time for disposition of the PAE shall be tolled for a reasonable period of time (not to exceed 10 business days, except when such delay is based on the reasonable needs or request of the Applicant, and only for a specific additional period occasioned by the Applicant's needs or request) while such additional evidence is gathered. "*

These comments were received on July 14, 2014 from Carol Westlake indicating she was "Authorized to sign for us all -

THCA -Jesse Samples  
NHC - Gerald Coggins  
TJC - Gordon Bonnyman  
PACE - Criss Grant

In the State's response sent to you and to Ms. Westlake on August 15, 2014, the proposed language was accepted, with the addition of the following language *"and only for a specific additional period not to exceed a total period of more than 30 calendar days, occasioned by the Applicant's needs or request,"* to specifically address the concern you raise—that PAEs are not allowed to remain open indefinitely. If a PAE is denied because the information cannot be timely obtained, a new PAE, including Safety Determination request can be filed at any time.

With respect to end dating a PAE that is approved based on Safety, the ability to end date a PAE when the circumstances giving rise to approval of a Safety Determination request are anticipated to change poses no additional financial risk to facilities. The TennCare Rules have always given TennCare permission to end-date a PAE when a person's medical condition is anticipated to change. Clearly, TennCare cannot continue to authorize a service when such service (i.e., level of care) is no longer needed. The facilities' obligations with respect to discharge notice and planning commence when the person is able to transition to a more integrated, community setting.

While we have had previous and ongoing discussions regarding THCA's concerns regarding the financial impact when applicants request continuances during a medical eligibility appeal, the proposed language pertaining to appeals is beyond the scope of these rules, as it pertains not to the process by which a Safety Determination is made (which is the explicit intent of these rules), but rather, to requirements pertaining to appeals of medical eligibility denials, which are governed by 1200-13-01-.10(7) and the *Doe* Consent Decree. *Doe* requirements related to TennCare's timely processing of PAE appeals remain in effect and require that a final administrative order be rendered within 90 days of the appeal received date, except when the case is continued at the request of the applicant.

The purpose of these rules is to improve the efficiency and effectiveness of the medical eligibility determination process in an effort to minimize the need for appeals. Since implementing these changes on November 1, 2014, we have in fact seen the volume of PAE appeals decline markedly, as reflected in the table below:

Monthly volume of PAE appeals received:

Aug	Sept	Oct	Nov	Dec	Jan
130	133	109	71	50	71

We believe this is directly related to the fact that we are receiving more Safety Determination requests, when appropriate, and while work remains to be done with respect to ensuring the completeness of such requests (particularly from Nursing Facilities), we have been able to approve 35 Safety Determination requests in the first month, and 64 in the second month (January data is pending).

Again, we appreciate your comments, and the opportunity to work with you on these important improvements. We have attached a tracked changes version of the rule, showing the additional changes that have been made based on public comment. We hope these responses, along with appropriate adjustments in the rule, are helpful.

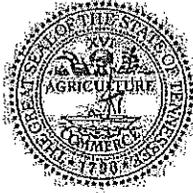
Respectfully,



Patti Killingsworth

Assistant Commissioner and Chief of Long Term Services and Supports

- CC: Darin J. Gordon, Deputy Commissioner, HCFA
- Julie Johnson, Deputy of Operations, Long Term Services and Supports
- Susie Baird, Director of Policy
- Aaron C. Butler, Assistant Director of Policy
- Kristeena Ashby, Assistant Deputy of Operations



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Ms. Katie Evans Moss  
Legal Aid Society of Middle Tennessee and the Cumberlandds  
300 Deaderick Street  
Nashville, TN 37201

Dear Ms. Evans Moss:

Thank you for your comments regarding the State's proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC).

Certainly, we recognize the need to help protect Tennessee's most vulnerable citizens, and for the availability of temporary shelter when a person is in crisis and must be removed from their living situation. To that end, the request for placement by law enforcement or APS is critical information that should be provided to TennCare for consideration in the Safety Determination review. In fact, the mere involvement of law enforcement or APS *is* sufficient for TennCare to conduct a Safety Determination upon request of the submitting entity as reflected in the rule.

However, it would not be possible for TennCare to conduct a Safety Determination review separate and apart from the medical eligibility process of which it is explicitly a part, or absent a Safety Determination request submitted as part of a complete PAE application along with the detailed medical and functional information, as well as safety-related concerns necessary for TennCare to make such a determination.

NF services are, pursuant to federal law [see 42 U.S. Code § 1396r] provided to persons who require medical or nursing care, rehabilitation services, or health-related care and services (*above the level of room and board*) which can be made available to them *only* through institutional facilities. The benefit is not available simply to provide emergency shelter, even when such housing arrangement may be urgently needed for non-medically related reasons, including crisis.

Pursuant to Tennessee's established NF LOC criteria, other factors (beyond functional and medical needs) affecting the person's health and safety can and should be taken into account, but cannot and should not replace the person's functional and medical need for such services. The evaluation of these needs is based on an assessment and is reviewed based on supporting evidence of the person's medical and functional needs. In short, Medicaid cannot simply approve and provide reimbursement for NF services for any person determined to be in crisis.

Further, while we certainly respect the dedication and expertise of APS and law enforcement as it relates to crises, neither law enforcement nor APS staff is likely skilled in assessing a person's medical eligibility for LTSS, and law enforcement in particular may be completely unaware of the array of services and supports available to an individual in any of the State's programs. Finally, the availability and willingness of other caregivers who may provide needed assistance would be a significant mitigating factor.

We believe that the changes in the Safety Determination process will help to ensure that NF services are available to persons, including in situations involving elder abuse or crisis situations, when NF services are the most appropriate placement for a person—because the person's functional and medical needs as well as other safety concerns require that level of care.

With respect to the list in Rule 1200-13-01-.05(6)(a), while we believe the list is comprehensive, we are willing to continue to consider other specific examples for inclusion in the rule. Moreover, the rules clearly identify this list as circumstances for which a Safety Determination "shall be made" by TennCare. The list does not preclude TennCare from making Safety Determinations in other circumstances which are not enumerated.

In response to this comment, we have added that clarification to the rule at 1200-13-01-.05(6)(b), while also making clear that a referral to the AAAD or MCO (based on insufficient evidence to make a Safety Determination) shall only be made in circumstances where one or more of the criteria specified in (a) are met. The Safety Determination Form has also been revised to include a section for information regarding other safety concerns not specified in (a).

Because we anticipated (and based on experience now confirm) that the new process is likely to increase significantly the volume of Safety Determination requests and because of the strict timeline within which LOC decisions are made, we believe it is important to focus the attention of TennCare nurses, as well as AAADs and MCOs, on those circumstances where substantive concerns exist. An open-ended process where any person can assert safety concerns for any reason will be unmanageable and place the Bureau at risk of missing court-ordered timelines for NF applications.

The following language is inserted at 1200-13-01-.05(6)(b).

"TennCare may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which TennCare determines may impact the person's ability to be safely served in CHOICES Group 3, along with sufficient medical evidence to make a Safety Determination."

With respect to examples of the documentation required at 1200-13-01-.05(6)(a)(2)-(4), the "imminence and seriousness of risk" is often inherent in the presentation of symptoms of the deficit. Thus the rule requires detailed description of how the deficit impacts the applicant's safety, noting that specific examples are helpful. For example, if a person is not oriented to event or situation, it is not a safety concern if the person laughs or cries in an improper emotional context. On the other hand, if a person whose disorientation to situation has led him or her to go outside with minimal clothing in the wintertime or to walk into the middle of a busy street, the risk of harm is much greater. It is important for reviewers to understand how the deficit evidences itself and how such situations pose a risk of harm. Additional explanation of the expectation and specific examples will be added to the training materials. Please note also that item (4) does not specifically ask for explanation regarding imminence or seriousness of risk as such risk is implicit for a person who is unable to toilet and to ambulate or transfer and for whom caregivers are not available to provide needed assistance.

With respect to the proposed 1200-13-01-.05(6)(f) (1200-13-01-.05(6)(g) as revised), to be clear, it has never been the case that individuals who are in a NF and seeking NF LOC approval through CHOICES are automatically approved for Group 3 LOC when they are not approved for Group 1 or 2. A person must first meet Group 3 (or "At Risk") LOC criteria as specified in TennCare Rule 1200-13-01-.10(4)(b)(1)(ii) and (2)(iii) *before* approval of a Group 3 PAE. Once Group 3 LOC is met, the person is still not automatically enrolled in CHOICES Group 3. All eligibility and enrollment criteria must be satisfied before a person can be enrolled into CHOICES Group 3.

Of particular import, pursuant to the terms of our approved 1115 demonstration and the TennCare Rules, a person cannot be determined eligible for and enrolled in Group 2 or 3 (and the correlating demonstration eligibility category, as applicable) *until and unless* he will actually begin *receiving* home and community based services. We do in fact find that some applicants do not want to receive HCBS, and thus, must ensure that the applicant wants HCBS and intends to begin receiving HCBS *before* enrollment can proceed. This is also a matter of financial program integrity since the State is not authorized to pay a capitation payment encompassing the provision of LTSS unless the person qualifies for and will begin receiving LTSS. We will continue working with our partners and our stakeholders to try to ensure that the process of confirming the member's desire to proceed with Group 3 enrollment is obtained in as efficient and timely a manner as possible.

With respect to the applicant's right to appeal a denied PAE when a Safety Determination has been requested, that is absolutely the intent. In response, we have added the following language to proposed 1200-13-01-.05(6)(f)(1) (1200-13-01-.05(6)(g)(1) as revised):

"This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within thirty (30) calendar days."

Thank you for your careful review of improvements related to ADLs and ADL-related activities and for your specific recommendation regarding self-administration of medications. We believe that the previously proposed modifications in the rule have appropriately captured this deficit to include individuals who have physical or cognitive impairments which persistently inhibit his or her ability to self-administer medications and who would be unable to manage their medications, leaving them at serious and imminent risk of harm. We do want to ensure that we do not cast the net too broadly, resulting in inappropriate institutional placement for individuals whose needs can be safely met in more integrated community settings. The proposed changes to the criteria have been thoroughly vetted with the intent of both addressing concerns raised by stakeholders, and of clarifying criteria and documentation requirements for persons completing the PAE assessment. We will, however, continue to monitor the criteria as we move forward to determine if any additional adjustments are needed.

With respect to audits of safety determination processes, audits serve as one mechanism for providing quality assurance. TennCare has a fiduciary responsibility to continuously monitor the quality of its processes pertaining to medical eligibility determinations. All PAE types are audited for the submission of complete and accurate information, including those which include a Safety Determination request.

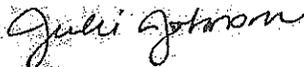
These quality monitoring processes are not enumerated in rule (nor is such required), as they are frequently adjusted as part of a continuous quality improvement approach.

The training materials pertaining to Safety Determinations include a single slide (out of 86 total slides) regarding the audit of Safety Determination requests. The slide does not use the term "inappropriately." The slide also identifies one of the most important purposes of these audits: to enable TennCare to provide targeted technical assistance to entities found to submit incorrect or incomplete PAEs, including Safety Determination requests. Currently, TennCare reports audit findings with high error rates to the submitting entity and uses these findings to provide targeted technical assistance. We plan to soon begin providing this information to MCOs. Our intent is to be completely transparent as audit processes are defined, especially if penalties of any kind are potentially involved, which is the reason for including this information in our training materials.

We believe it is in the best interest of applicants to identify and address persistent problems with any submitting entity in order to ensure that TennCare has complete and accurate information upon which to base a medical eligibility decision (including Safety Determination request, as applicable). We respectfully disagree that such audits "discourage facilities and MCOs from submitting PAEs and safety assessments at all," but that rather, they encourage a thorough and deliberate process that yields the best outcome for applicants. We have received requests from nursing facilities not targeted for technical assistance who want to proactively improve their performance in this area, further reinforcing that this information has value to applicants, submitters and TennCare alike.

Again, we appreciate your comments and your continued efforts on behalf of older adults and caregivers. We have attached a tracked changes version of the rule, showing the additional changes that have been made based on public comment. We hope these responses, along with appropriate adjustments in the rule, are helpful.

Respectfully,



Julie Johnson  
Deputy of Operations  
Long Term Services and Supports

CC: Patti Killingsworth, Assistant Commissioner and Chief of Long Term Services and Supports  
Susie Baird, Director of Policy  
Aaron C. Butler, Assistant Director of Policy  
Kristeena Ashby, Assistant Deputy of Operations



STATE OF TENNESSEE  
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**BUREAU OF TENNCARE**  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Jesse Samples  
Executive Director  
Tennessee Health Care Association  
2809 Foster Avenue  
Nashville, TN 37210

Carol Westlake  
Executive Director  
Tennessee Disability Coalition  
955 Woodland Street  
Nashville, TN 37206

Gerald Coggin  
Senior Vice President  
National HealthCare Corporation  
P.O. Box 1398  
Murfreesboro, TN 37133

Gordon Bonnyman  
Attorney  
Tennessee Justice Center  
301 Charlotte Avenue  
Nashville, TN 37201

Criss Grant  
Director of Planning and Communications  
Alexian Brothers PACE  
425 Cumberland Street  
Chattanooga, TN 37404

Dear LTSS Stakeholder:

Thank you for the opportunity to work together for over a year to develop and refine proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC), and for your additional comments on the proposed rule. We appreciate your suggestions and the opportunity to review and thoughtfully consider them. We have reiterated your comments and recommendations below, along with a detailed response to each item. We have further attached a tracked changes version of the rules, showing the additional changes that have been made based on public comment.

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**1200-13-01-.05(6) Safety Determinations that an Applicant Would Not Qualify to Enroll in**

**CHOICES Group 3 (including Interim CHOICES Group 3).**

We recommend that the list of triggering events that prompt a Safety Determination include the involvement of Adult Protective Services or law enforcement. We do *not* suggest that the mere fact that a CHOICES applicant has been the subject of an APS or law enforcement intervention is sufficient

to warrant CHOICES eligibility. We recognize that some applicants who are the subject of an APS or law enforcement intervention may be able to be safely maintained in the community with a CHOICES 3 level of services. However, APS or law enforcement become involved when there is a fear for a person's safety. Such involvement should therefore raise a red flag and prompt a Safety Determination by qualified personnel on behalf of the CHOICES program.

**State's response:**

Certainly, we recognize the need to help protect Tennessee's most vulnerable citizens, and for the availability of temporary shelter when a person must be removed from their living situation. To that end, the request for placement by law enforcement or APS is critical information that should be provided to TennCare for consideration in the Safety Determination review. In fact, the mere involvement of law enforcement or APS *is* sufficient for TennCare to conduct a Safety Determination upon request of the submitting entity as reflected in the rule.

However, it would not be possible for TennCare to conduct a Safety Determination review separate and apart from the medical eligibility process of which it is explicitly a part, or absent a Safety Determination request submitted as part of a complete PAE application along with the detailed medical and functional information, as well as safety-related concerns necessary for TennCare to make such a determination.

NF services are, pursuant to federal law [see 42 U.S. Code § 1396r] provided to persons who require medical or nursing care, rehabilitation services, or health-related care and services (*above the level of room and board*) which can be made available to them *only* through institutional facilities. The benefit is not available simply to provide emergency shelter, even when such housing arrangement may be urgently needed for non-medically related reasons, including crisis.

Pursuant to Tennessee's established NF LOC criteria, other factors (beyond functional and medical needs) affecting the person's health and safety can and should be taken into account, but cannot and should not replace the person's functional and medical need for such services. The evaluation of these needs is based on an assessment and is reviewed based on supporting evidence of the person's medical and functional needs. In short, Medicaid cannot simply approve and provide reimbursement for NF services for any person determined to be in crisis.

We believe that the changes in the Safety Determination process will help to ensure that NF services are available to persons, including in situations involving elder abuse or crisis situations, when NF services are the most appropriate placement for a person—because the person's functional and medical needs as well as other safety concerns require that level of care.

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We also recommend that the rule include an explicit statement that the list set out in (a) is not meant to be exclusive, and that a Safety Determination may be requested whenever a requester is able to present circumstances that raise a legitimate concern for the applicant's safety. It is not possible to envision all of the circumstances where an applicant can be endangered, and the rule should not limit the Bureau's ability to effectively implement and enforce the safety requirements of the CHOICES waiver.

**State's response:**

With respect to the list in Rule 1200-13-01-05(6)(a), while we believe the list is comprehensive, we are willing to continue to consider other specific examples for inclusion in the rule. Moreover, the rules clearly identify this list as circumstances for which a Safety Determination "shall be made" by TennCare. The list

does not preclude TennCare from making Safety Determinations in other circumstances which are not enumerated.

In response to this comment, we have added that clarification to the rule at 1200-13-01-.05(6)(b), while also making clear by that a referral to the AAAD or MCO (based on insufficient evidence to make a Safety Determination) shall only be made in circumstances where one or more of the criteria specified in (a) are met. The Safety Determination Form has also been revised to include a section for information regarding other safety concerns not specified in (a).

Because we anticipated (and based on experience now confirm) that the new process is likely to increase significantly the volume of Safety Determination requests and because of the strict timeline within which LOC decisions are made, we believe it is important to focus the attention of TennCare nurses, as well as AAADs and MCOs, on those circumstances where substantive concerns exist. An open-ended process where any person can assert safety concerns for any reason will be unmanageable and place the Bureau at risk of missing court-ordered timelines for NF applications.

The following language is inserted at 1200-13-01-.05(6)(b).

“TennCare may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which TennCare determines may impact the person’s ability to be safely served in CHOICES Group 3, along with sufficient medical evidence to make a Safety Determination.”

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**We recommend the inclusion of examples of the documentation required to prove that there is imminent or serious risk for subparts 2, 3 and 4. (Such guidance can be included in the rule itself or in forms developed for requesting Safety Determinations.)**

**State’s response:**

With respect to examples of the documentation required at 1200-13-01-.05(6)(a)(2)-(4), the “imminence and seriousness of risk” is often inherent in the presentation of symptoms of the deficit. Thus the rule requires detailed description of how the deficit impacts the applicant’s safety, noting that specific examples are helpful. For example, if a person is not oriented to event or situation, it is not a safety concern if the person laughs or cries in an improper emotional context. On the other hand, if a person whose disorientation to situation has led him or her to go outside with minimal clothing in the wintertime or to walk into the middle of a busy street, the risk of harm is much greater. It is important for reviewers to understand how the deficit evidences itself and how such situations pose a risk of harm. Additional explanation of the expectation and specific examples will be added to the training materials. Please note also that item (4) does not specifically ask for explanation regarding imminence or seriousness of risk as such risk is implicit for a person who is unable to toilet and to ambulate or transfer and for whom caregivers are not available to provide needed assistance.

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Clause (f)(2) seems to indicate that if a Safety Determination is denied, the Applicant must then take affirmative steps to become enrolled in Group 3. We fear this results in an unintended gap in services for individual not already enrolled in an MCO and may create an undue delay in the provision of services. For this reason, we think that (f)(2) should be modified to make clear that denial of a Safety Determination request automatically enrolls that person into Group 3, if the person meets all other eligibility requirements.

**State's response:**

With respect to the proposed 1200-13-01-.05(6)(f) (1200-13-01-.05(6)(g) as revised), to be clear, it has never been the case that individuals who are in a NF and seeking NF LOC approval through CHOICES are automatically approved for Group 3 LOC when they are not approved for Group 1 or 2. A person must first meet Group 3 (or "At Risk") LOC criteria as specified in TennCare Rule 1200-13-01-.10(4)(b)(1)(ii) and (2)(iii) *before* approval of a Group 3 PAE. Once Group 3 LOC is met, the person is still not automatically enrolled in CHOICES Group 3. All eligibility and enrollment criteria must be satisfied before a person can be enrolled into CHOICES Group 3.

Of particular import, pursuant to the terms of our approved 1115 demonstration and the TennCare Rules, a person cannot be determined eligible for and enrolled in Group 2 or 3 (and the correlating demonstration eligibility category, as applicable) *until and unless* he will actually begin *receiving* home and community based services. We do in fact find that some applicants do not want to receive HCBS, and thus, must ensure that the applicant wants HCBS and intends to begin receiving HCBS *before* enrollment can proceed. This is also a matter of financial program integrity since the State is not authorized to pay a capitation payment encompassing the provision of LTSS unless the person qualifies for and will begin receiving LTSS. We will continue working with our partners and our stakeholders to try to ensure that the process of confirming the member's desire to proceed with Group 3 enrollment is obtained in as efficient and timely a manner as possible.

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**We recommend that the proposed rule amendment be revised as follows to make explicit the right to appeal when a decision on a Safety Determination is adverse to the Applicant.**

**Appeals. An Enrollee shall have the right to appeal an adverse action in accordance with TennCare rule 1200-13--01-.10(7).**

**State's response:**

With respect to the applicant's right to appeal a denied PAE when a Safety Determination has been requested, that is absolutely the intent. In response, we have added the following language to proposed 1200-13-01-.05(6)(f)(1) (1200-13-01-.05(6)(g)(1) as revised):

"This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within thirty (30) calendar days."

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**1200-13-01-.10(4)(b)**

The proposed rules include important change to the definitions of impairments of activities of daily living. We appreciate that the dementia diagnosis has been eliminated from the behavior definition, and that the orientation definition has been improved, and we support the inclusion of those changes in this rule.

We request that the Bureau continue a discussion with stakeholders of the other definitions in this rule. While we have previously raised concerns about some of the definitions, these have not been part of our ongoing discussions. We believe that the sort of careful vetting to which the Safety

Determination rule was subjected would help to identify anomalies and unintended consequences in the definitions section of the rules.

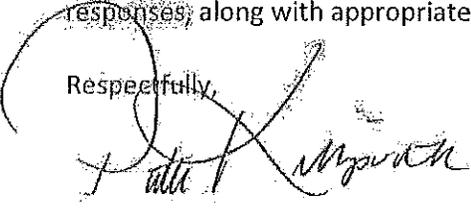
For example, the definition of eating impairments [Definition (III)] recognizes that "in the absence of such physical assistance or constant one-on-one observation and verbal assistance, the Applicant would be unable to self-perform this task." By contrast, the definition of "Medication Administration" [Definition (VII)] does not recognize a qualifying impairment even if the person requires "limited assistance" in the form of the same sort of observation and verbal assistance, plus additional aid, in order to take medications. That is despite the fact that the consequence of even a single medication error due to the inability to safely self-administer medication is potentially very grave. We note this anomaly only as an example of the need to carefully examine and discuss all of the definitions, now that the Bureau, consumers and providers have the benefit of extended experience with the application of those definitions.

State's response:

Thank you for reiterating your concerns regarding changes in ADL and ADL-related criteria set forth in Rule 1200-13-01-.10(4)(b), items I-IX of the proposed rule. As previously advised, the proposed changes to the criteria were thoroughly vetted with the intent of both addressing concerns previously raised by Stakeholders, and of clarifying criteria and documentation requirements in order to aide persons completing the PAE assessment. Submission of the needed documentation with the PAE will help to ensure timely approval of the appropriate level of care, and minimize unnecessary delays and/or appeals. We have reviewed these criteria changes with the entire PAE nursing staff and have modified any language that could have potentially been misconstrued as requiring a more restrictive application of medical eligibility criteria. The team feels very strongly that these changes will help to ensure that the appropriate level of care is approved, including situations where approval will be based on an approved Safety Determination. We therefore continue to believe it is in the best interest of Applicants to move forward with these changes, but will continue to review the impact of these changes in case additional adjustments are needed.

I hope this reinforces that the time we have invested in working together on these improvements has resulted in meaningful benefit for applicants, facilities, and the State. We reiterate our gratitude for your valuable input, and look forward to continuing to work together in that regard. We hope these responses, along with appropriate adjustments in the rule, are helpful.

Respectfully,



Patti Killingsworth  
Assistant Commissioner and Chief of Long Term Services and Supports

CC: Darin J. Gordon, Deputy Commissioner, HCFA  
Julie Johnson, Deputy of Operations, Long Term Services and Supports  
Susie Baird, Director of Policy  
Aaron C. Butler, Assistant Director of Policy  
Kristeena Ashby, Assistant Deputy of Operations



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
**BUREAU OF TENNCARE**  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Ms. Amelia Crotwell  
Elder Law of East Tennessee

Dear Ms. Crotwell:

Thank you for your comments regarding proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC). We appreciate your suggestions and the opportunity to review and thoughtfully consider them.

The proposed rule is not published on the SOS website as "Effective Rules." See <http://www.tn.gov/sos/rules/1200/1200-13/1200-13-01.20141026.pdf>. Rules are also posted on the SOS website when they are scheduled for rulemaking hearing. The hearing date for the proposed rule was November 18, 2014. The proposed rule has been going through the formal rulemaking process and as such comments received have been considered. Because Safety Determination and the processes pertaining thereto have not been previously defined in rule, the policy and process changes related to Safety Determinations were implemented November 1, 2014, upon agreement with the Tennessee Justice Center, the Tennessee Disability Coalition, the Tennessee Health Care Association and other stakeholders that these changes were in the best interest of applicants and should be implemented as soon as possible (once system modifications and training were complete). Any additional changes determined by the Bureau to be appropriate based on comments received will be implemented by the effective date of the new rule.

With respect to the items listed in 1200-13-01.02(b), the rule clearly indicates that the review of information is not limited to the list included. It would be burdensome if not impossible to enumerate every potential kind of information which could be submitted for consideration. All information submitted with a PAE (including a Safety Determination request, as applicable) is reviewed by TennCare.

We respectfully caution, however, that not every safety concern is appropriately addressed through NF placement. One of the objectives of the State's level of care criteria is to help ensure that the more intensive NF benefit is targeted to persons with higher acuity of need—to those whose needs cannot be safely met in more integrated community settings. We want to ensure that persons who can be safely supported in more integrated community settings are not inappropriately institutionalized, when other less restrictive safety measures could be put into place. For example,

eliminating the availability of a car, or even car keys, may be a more appropriate way to address driving concerns than placement in a NF. Likewise, there may be other less restrictive ways to address medication management concerns than placing a person who requires such assistance in a NF.

With respect to the list at 1200-13-01-.05(6)(a), please see comments above with respect to the appropriateness of NF placement. Further, while we believe the list is comprehensive, we are willing to continue to consider other specific examples for inclusion in the rule. Moreover, the rules clearly identify this list as circumstances for which a Safety Determination "shall be made" by TennCare. The list does not preclude TennCare from making Safety Determinations in other circumstances which are not enumerated.

In response to this comment, we have added that clarification to the rule at 1200-13-01-.05(6)(b), while also making clear that a referral to the AAAD or MCO (based on insufficient evidence to make a Safety Determination) shall only be made in circumstances where one or more of the criteria specified in (a) are met. The Safety Determination Form has also been revised to include a section for information regarding other safety concerns not specified in (a).

Because we anticipated (and based on experience now confirm) that the new process is likely to increase significantly the volume of Safety Determination requests and because of the strict timeline within which LOC decisions are made, we believe it is important to focus the attention of TennCare nurses, as well as AAADs and MCOs, on those circumstances where substantive concerns exist. An open-ended process where any person can assert safety concerns for any reason will be unmanageable and place the Bureau at risk of missing court-ordered timelines for NF applications.

The following language is inserted at 1200-13-01-.05(6)(b).

"TennCare may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which TennCare determines may impact the person's ability to be safely served in CHOICES Group 3, along with sufficient medical evidence to make a Safety Determination."

Regarding the standard for approval of Safety Determinations in 1200-13-01-.05(6)(e)(1) of the proposed rule (1200-13-01-.05(6)(f)(1) as revised), medical eligibility decisions, including Safety Determinations, are made by licensed and registered nurses employed by the Bureau of TennCare, based on review of a comprehensive assessment and supporting medical evidence, and utilizing their trained and experienced professional judgment. The standard for approval is clearly set forth in the proposed rule, i.e., "sufficient evidence, as required and determined by TennCare, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non- CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers who are willing and able to provide such care." We respectfully believe that the proposed language "as least as likely as not" is far more ambiguous and lacks the rigor necessary for a determination of medical eligibility.

With respect to the recommendation to remove paragraph 1200-13-01-.05(6)(e)(4) from the proposed rule, the safety determination process is used to determine whether a person requires the level of

care provided in a nursing facility, or whether the person can be safely served in a more integrated community setting if enrolled in CHOICES Group 3. We do not believe that unnecessary placement in an institution is an "error" to be taken lightly.

NF services are, pursuant to federal law [see 42 U.S. Code § 1396r] provided to persons who require medical or nursing care, rehabilitation services, or health-related care and services (*above the level of room and board*) which can be made available to them *only* through institutional facilities. The benefit is not available simply to provide emergency shelter, even when such housing arrangement may be urgently needed for non-medically related reasons, including crisis. The lack of availability of community housing and the need for assistance with routine medication management are not sufficient by themselves to show that a person's needs cannot be safely met if enrolled in CHOICES Group 3.

Pursuant to Tennessee's established NF LOC criteria, other factors (beyond functional and medical needs) affecting the person's health and safety can and should be taken into account, but cannot and should not replace the person's functional and medical need for such services. The evaluation of these needs is based on an assessment and is reviewed based on supporting evidence of the person's medical and functional needs. In short, Medicaid cannot simply approve and provide reimbursement for NF services for any person determined to need housing or assistance with medications.

We believe that the changes in the Safety Determination process will help to ensure that NF services are available to persons when NF services are the most appropriate placement for a person—because the person's functional and medical needs as well as other safety concerns require that level of care.

With respect to proposed rule 1200-13-01-.05(6)(f), TennCare has never provided a "blacked statement" [sic] that an application is denied. Notices regarding NF PAE denials are governed by the *Due Consent Decree* and contain a detailed description of the reasons for denial. The same standard is applied to HCBS applications. Further, TennCare provides a line-by-line explanation next to each ADL or ADL-related item and each denied safety justification in TPAES.

Thank you for your careful review of improvements related to ADLs and ADL-related activities and for your specific recommendation regarding several of these items.

With respect to eating, the assessment of functional deficit is based on the level of support needed by the individual applicant, not how such level of assistance is provided. "General supervision" and person-specific directed observation and verbal assistance describe two different levels of assistance. This does not preclude that a particular staff person might meet the one-on-one needs of more than 1 resident; what is instructive is the level of assistance needed by the applicant. A staff person who periodically instructs everyone at the table to eat does not mean that such level of assistance is required by each resident in order to perform this activity.

With respect to self-administration of medications, examples of limited assistance are included in the rule. We believe that the previously proposed modifications in the rule have appropriately captured this deficit to include individuals who have physical or cognitive impairments which persistently inhibit his or her ability to self-administer medications and who would be unable to manage their medications, leaving them at serious and imminent risk of harm. We do want to ensure that we do not cast the net too broadly, resulting in inappropriate institutional placement for individuals whose needs can be safely met in more integrated community settings. The proposed changes to the criteria have been thoroughly vetted with the intent of both addressing concerns raised by stakeholders, and of clarifying criteria and

documentation requirements for persons completing the PAE assessment. We will, however, continue to monitor the criteria as we move forward to determine if any additional adjustments are needed.

With respect to bathing, dressing and grooming, there are several reasons that these have not historically been part of the PAE application or added with recent changes. The first is that unlike most of the other ADLs assessed, these are activities that occur once or perhaps (with respect to dressing) twice per day, and usually at fairly regular times such that it is easier to either have natural supports in place, or to meet the need with a moderate level of HCBS. This is not the case with ADLs such as transfers, mobility, or toileting, or needs related to orientation, communication, and behavior that may occur throughout the day. In addition, assessment of the ADLs currently included in the PAE will likely identify any deficits in bathing and dressing. For the most part, deficiencies in bathing are related to difficulties with transfers and with mobility. And part of the assessment of a person's ability to toilet independently includes consideration of dressing-related components of that particular task. Deficits regarding these needs can, however, be presented as part of broader concerns pertaining to a member's safety in the community, when applicable.

As it relates to care coordinators' concerns that the new rules "do not *automatically enroll* someone in Group 3 when the NF PAE for group 1 or 2 is denied," it has never been the case that individuals who are in a NF and seeking NF LOC approval through CHOICES are automatically approved for Group 3 LOC when they are not approved for Group 1 or 2. A person must first meet Group 3 (or "At Risk") LOC criteria as specified in TennCare Rule 1200-13-01-10(4)(b)(1)(ii) and (2)(iii) *before* approval of a Group 3 PAE. Once Group 3 LOC is met, the person is still not automatically enrolled in CHOICES Group 3. All eligibility and enrollment criteria must be satisfied before a person can be enrolled into CHOICES Group 3.

Of particular import, pursuant to the terms of our approved 1115 demonstration and the TennCare Rules, a person cannot be determined eligible for and enrolled in Group 2 or 3 (and the correlating demonstration eligibility category, as applicable) *until and unless* he will actually begin *receiving* home and community based services. We do in fact find that some applicants do not want to receive HCBS, and thus, must ensure that the applicant wants HCBS and intends to begin receiving HCBS *before* enrollment can proceed. This is also a matter of financial program integrity since the State is not authorized to pay a capitation payment encompassing the provision of LTSS unless the person qualifies for and will begin receiving LTSS. We will continue working with our partners and our stakeholders to try to ensure that the process of confirming the member's desire to proceed with Group 3 enrollment is obtained in as efficient and timely a manner as possible.

With respect to initiation of services in Group 3, once a person satisfies all eligibility requirements and can be enrolled into Group 3, MCOs have specific timeframes within which services must be initiated. Further nursing facilities are obligated pursuant to 42 CFR 483.12 to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility," a longstanding federal requirement which pre-dates the CHOICES program. Part of the challenge for MCOs is making sure they are appropriately informed of a person's placement in a hospital or Skilled Nursing Facility, since the majority of applicants are dually eligible for Medicare and admitted to a Medicare SNF following a Medicare acute stay, benefits which the MCO does not manage. Discharge planning is most effective when it begins upon admission and with collaboration among all providers and payers to help ensure a timely and safe transition.

To be clear, MCOs and NFs do not make Safety Determinations. All Safety Determinations are made by licensed and registered nurses at the Bureau of TennCare.

MCOs and NFs have been provided guidance related to Safety Determinations, both before and since the issuance of this notice of public rulemaking. In preparation for implementation of these changes to the Safety Determination process, TennCare prepared training presentations specific to Safety Determination, which are now available online. We have also conducted more than 17 in-person training sessions and 2 webinars. Webinars continue to be offered twice each month. Further, TennCare facilitated a weekly conference call from September 1 through December with each MCO to further discuss changes related to the Safety Determination process. In addition, a PAE manual and TPAES training presentation, which include the Safety Determination process, are available online. If someone was unable to attend one of the several in-person trainings or webinars, or is unable to access or understand the three online training tools available to describe this process, LTSS has a dedicated call center with agents who are knowledgeable about the safety Determination process and available to answer user questions during business hours.

We agree that it is problematic when a Safety Determination that should be requested is not. It is also problematic when Safety Determination requests are made frivolously, as resources are diverted away from timely processing of appropriate requests.

With respect to audits of safety determination processes, audits serve as one mechanism for providing quality assurance. TennCare has a fiduciary responsibility to continuously monitor the quality of its processes pertaining to medical eligibility determinations. All PAE types are audited for the submission of complete and accurate information, including those which include a Safety Determination request. The training materials pertaining to Safety Determinations include a single slide (out of 86 total slides) regarding the audit of Safety Determination requests. The slide also identifies one of the most important purposes of these audits: to enable TennCare to provide targeted technical assistance to entities found to submit incorrect or incomplete PAEs, including Safety Determination requests. Currently, TennCare reports audit findings with high error rates to the submitting entity and uses these findings to provide targeted technical assistance. We plan to soon begin providing this information to MCOs. Our intent is to be completely transparent as audit processes are defined, especially if penalties of any kind are potentially involved, which is the reason for including this information in our training materials. Of note, MCO contracts do provide for the assessment of liquidated damages for failure to timely submit a Safety Determination request and for the failure to ensure that such documentation is complete and accurate. No such provision is currently in place for Nursing Facilities.

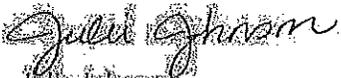
We believe it is in the best interest of applicants to identify and address persistent problems with any submitting entity in order to ensure that TennCare has complete and accurate information upon which to base a medical eligibility decision (including Safety Determination request, as applicable). We respectfully disagree that such audits "discourage facilities and MCOs from submitting PAEs and safety assessments at all," but that rather, they encourage a thorough and deliberate process that yields the best outcome for applicants. We have received requests from nursing facilities not targeted for technical assistance who want to proactively improve their performance in this area, further reinforcing that this information has value to applicants, submitters and TennCare alike.

Regarding 1200-13-01-.05(6)(b), the rule enumerates a variety of examples of other services that might be available to help meet a member's needs in the community if enrolled into Group 3. As you know, TennCare is the payer of last resort; we thus expect that MCOs are assisting members in accessing benefits available through other programs, when appropriate, and that such benefits are taken into account in the planning process. The need for a physician's order or concurrent review and authorization of such services is not justification for supplanting these benefits through the Medicaid program. Many members receiving LTSS also receive Home Health services, and while

the scope of the two benefits is different, Home Health aide services can often provide needed in-home support for seniors and adults with physical disabilities.

Again, we appreciate your comments and your continued efforts on behalf of older adults and caregivers. We have attached a tracked changes version of the rule, showing the additional changes that have been made based on public comment. We hope these responses, along with appropriate adjustments in the rule, are helpful.

Respectfully,



Julie Johnson

Deputy of Operations  
Long Term Services and Supports

CC: Patti Killingsworth, Assistant Commissioner and Chief of Long Term Services and Supports  
Susie Baird, Director of Policy  
Aaron C. Butler, Assistant Director of Policy  
Kristeena Ashby, Assistant Deputy of Operations



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
**BUREAU OF TENNCARE**  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

February 9, 2015

Ms. Carol Westlake  
Tennessee Disability Coalition  
955 Woodland Street  
Nashville, TN 37206

Dear Ms. Westlake:

Thank you for the opportunity to work together for over a year to develop and refine proposed revisions to TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility for long-term services and supports—specifically the Safety Determination process for Nursing Facility (NF) level of care (LOC), and for your additional comments on the proposed rule.

With respect to the list in Rule 1200-13-01-.05(6)(a), while we believe the list is comprehensive, we are willing to continue to consider other specific examples for inclusion in the rule. Moreover, the rules clearly identify this list as circumstances for which a Safety Determination “shall be made” by TennCare. The list does not preclude TennCare from making Safety Determinations in other circumstances which are not enumerated.

In response to this comment, we have added that clarification to the rule at 1200-13-01-.05(6)(b), while also making clear by that a referral to the AAAD or MCO (based on insufficient evidence to make a Safety Determination) shall only be made in circumstances where one or more of the criteria specified in (a) are met. The Safety Determination Form has also been revised to include a section for information regarding other safety concerns not specified in (a).

Because we anticipated (and based on experience now confirm) that the new process is likely to increase significantly the volume of Safety Determination requests and because of the strict timeline within which LOC decisions are made, we believe it is important to focus the attention of TennCare nurses, as well as AAADs and MCOs, on those circumstances where substantive concerns exist. An open-ended process where any person can assert safety concerns for any reason will be unmanageable and place the Bureau at risk of missing court-ordered timelines for NF applications.

The following language is inserted at 1200-13-01-.05(6)(b).

“TennCare may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which TennCare determines may impact the person’s ability to be safely served in CHOICES Group 3, along with sufficient medical evidence to make a Safety Determination.”

With respect to examples of the documentation required at 1200-13-01-.05(6)(a)(2)-(4), the “imminence and seriousness of risk” is often inherent in the presentation of symptoms of the deficit. Thus the rule requires detailed description of how the deficit impacts the applicant’s safety, noting that specific examples are helpful. For example, if a person is not oriented to event or situation, it is not a safety concern if the person laughs or cries in an improper emotional context. On the other hand, if a person whose disorientation to situation has led him or her to go outside with minimal clothing in the wintertime or to walk into the middle of a busy street, the risk of harm is much greater. It is important for reviewers to understand how the deficit evidences itself and how such situations pose a risk of harm. Additional explanation of the expectation and specific examples will be added to the training materials. Please note also that item (4) does not specifically ask for explanation regarding imminence or seriousness of risk as such risk is implicit for a person who is unable to toilet and to ambulate or transfer and for whom caregivers are not available to provide needed assistance.

Regarding your comments on 1200-13-01-.05(6)(a)(8) and a report of APS or law enforcement involvement, certainly, we recognize the need to help protect Tennessee’s most vulnerable citizens, and for the availability of temporary shelter when a person must be removed from their living situation. To that end, the request for placement by law enforcement or APS is critical information that should be provided to TennCare for consideration in the Safety Determination review. In fact, the mere involvement of law enforcement or APS is sufficient for TennCare to conduct a Safety Determination upon request of the submitting entity as reflected in the rule.

However, it would not be possible for TennCare to conduct a Safety Determination review separate and apart from the medical eligibility process of which it is explicitly a part, or absent a Safety Determination request submitted as part of a complete PAE application, along with the detailed medical and functional information, as well as safety-related concerns necessary for TennCare to make such a determination.

NF services are, pursuant to federal law [see 42 U.S. Code § 1396r] provided to persons who require medical or nursing care, rehabilitation services, or health-related care and services (*above the level of room and board*) which can be made available to them *only* through institutional facilities. The benefit is not available simply to provide emergency shelter, even when such housing arrangement may be urgently needed for non-medically related reasons, including crisis.

Pursuant to Tennessee’s established NF LOC criteria, other factors (beyond functional and medical needs) affecting the person’s health and safety can and should be taken into account, but cannot and should not replace the person’s functional and medical need for such services. The evaluation of these needs is based on an assessment and is reviewed based on supporting evidence of the person’s medical and functional needs. In short, Medicaid cannot simply approve and provide reimbursement for NF services for any person determined to be in crisis.

We believe that the changes in the Safety Determination process will help to ensure that NF services are available to persons, including in situations involving elder abuse or crisis situations, when NF services are the most appropriate placement for a person—because the person’s functional and medical needs as well as other safety concerns require that level of care.

With respect to proposed rule 1200-13-01-.05(6)(f)(2) (1200-13-01-.05(6)(g)(2) as revised), to be clear, the plan of care described in the proposed rule at 1200-13-01-.05(6)(d)(3) (1200-13-01-.05(e)(3) as revised) is submitted to TennCare by the MCO Care Coordinator, NF, or PACE Organization (the "submitting entity") as part of a PAE that includes a Safety Determination request. The Plan of Care described at 1200-13-01-.05(6)(f)(2) (1200-13-01-.05(6)(g)(2) as revised) is developed by the MCO in response to a request from TennCare in accordance with 1200-13-01-.05(6)(c) of the proposed rule (1200-13-01-.05(6)(d) as revised) when an entity other than the MCO has submitted a PAE and has requested a Safety Determination, but the medical evidence received by TennCare from the submitting entity is insufficient to make a Safety Determination and TennCare has asked the MCO to gather additional information needed by TennCare to make a final Safety Determination. In the event that the MCO's assessment finds that it can safely meet the person's needs in Group 3, the MCO is expected to submit a plan of care demonstrating how the person's needs would be safely met and would be expected to implement that plan of care upon the person's enrollment into Group 3. The distinction made here and in proposed subparagraph (d) subpart 3 is intentional.

With respect to 1200-13-01-.05(6)(f) of the proposed rule (1200-13-01-.05(6)(g) as revised), proposed revisions to rule Chapter 1200-13-01 in this notice of rulemaking prescribe certain modifications (i.e., improvements) in the medical eligibility process for CHOICES, specifically the Safety Determination process. It does not therefore address contingencies and requirements that are elaborated in other rule sections or that apply pursuant to federal law or regulation or federal court orders.

If a PAE is denied, the applicant has appeal rights afforded at 1200-13-01-.10(7)(b). Those appeal rights include the right to appeal a denial when a Safety Determination has been requested but not approved, as reiterated at 1200-13-01-.05(6)(g)(1) of the revised rule.

"This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within thirty (30) calendar days."

Other obligations of the facility pursuant to notice of discharge and facilitation of discharge as specified in federal court orders in *Linton v. State of Tennessee*, federal regulations at 42 CFR 483.12 and state regulation at 1200-13-01-.06 (including the interaction of those requirements with the person's right to due process and to remain in the facility pending discharge), apply if the person does not qualify for Medicaid reimbursement of NF services and is unwilling to meet payment obligations for these services. These ongoing requirements are not impacted by these rules. This includes the facility's obligation pursuant to 42 CFR 483.12 to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility," a longstanding federal requirement which pre-dates the CHOICES program.

For TennCare members who choose to proceed with enrollment into Group 3, the person's MCO can work with the nursing facility regarding discharge in as timely and efficient a manner as possible. As you know, the member's access to housing can sometimes present a barrier that can impact the timeliness of discharge. When the member has housing available, HCBS can be arranged quickly to facilitate discharge (unless the member elects to remain in the facility pending appeal). MCOs can and do assist members who have housing needs, but access to affordable housing can be challenging.

Thank you for reiterating your concerns regarding changes in ADL and ADL-related criteria set forth in Rule 1200-13-01-.10(4)(b), items I-IX of the proposed rule. As previously advised, the proposed changes to the criteria were thoroughly vetted with the intent of both addressing concerns previously raised by Stakeholders, and of clarifying criteria and documentation requirements in order to aide persons completing the PAE assessment. Submission of the needed documentation with the PAE will help to

ensure timely approval of the appropriate level of care, and minimize unnecessary delays and/or appeals. We have reviewed these criteria changes with the entire PAE nursing staff and have modified any language that could have potentially been misconstrued as requiring a more restrictive application of medical eligibility criteria. The team feels very strongly that these changes will help to ensure that the appropriate level of care is approved, including situations where approval will be based on an approved Safety Determination. We therefore continue to believe it is in the best interest of Applicants to move forward with these changes, but will continue to review the impact of these changes in case additional adjustments are needed.

Again, we appreciate your comments, your continued advocacy on behalf of older adults and individuals with disabilities, and the opportunity to work with you on these important improvements. We have attached a tracked changes version of the rule, showing the additional changes that have been made based on public comment. We hope these responses, along with appropriate adjustments in the rule, are helpful.

Respectfully,



Patti Killingsworth

Assistant Commissioner and Chief of Long Term Services and Supports

CC: Julie Johnson, Deputy of Operations, Long Term Services and Supports  
Susie Baird, Director of Policy  
Aaron C. Butler, Assistant Director of Policy  
Kristeena Ashby, Assistant Deputy of Operations

**Regulatory Flexibility Addendum**

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

The rules are not anticipated to have an effect on small businesses.

### **Impact on Local Governments**

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

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

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Sequence Number: 04-15-15  
 Rule ID(s): 5934  
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 Effective Date: 7/13/15

# 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).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.02	Definitions
1200-13-01-.05	TennCare CHOICES Program
1200-13-01-.10	Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE

RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION  
BUREAU OF TENNCARE  
  
CHAPTER 1200-13-01  
TENNCARE LONG-TERM CARE PROGRAMS

**1200-13-01-.02 DEFINITIONS.**

- (4) ~~Advance Determination. A decision made by the Bureau in accordance with the process and requirements described in Rule 1200-13-01-.05(6) that an Applicant would not qualify to enroll in CHOICES Group 3 (including Interim CHOICES Group 3) when enrollment into CHOICES Group 3 has not actually been denied or terminated, and which may impact the person's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)(2)(i)(II) and 1200-13-01-.10(4)(b)(2)(ii)(II)).~~
- (54) Applicant. A person applying for TennCare-reimbursed LTSS, for whom a PAE has been submitted to TennCare, and/or by or on behalf of whom a Medicaid application has been submitted to DHS. For purposes of compliance with the Linton Order, the term shall include all individuals who have affirmatively expressed an intent to be considered for current or future admission to a NF or requested that their name be entered on any "wait list." All individuals who contact a NF to casually inquire about the facility's services or admissions policies shall be informed by the facility of that individual's right to apply for admission and be considered for admission on a nondiscriminatory basis and in conformance with Rule 1200-13-01-.06.

ETC.

(125) Safety Determination.

- (a) A decision made by the Bureau in accordance with the process and requirements described in Rule 1200-13-01-.05(6) regarding whether an Applicant would qualify to enroll in CHOICES Group 3 (including Interim CHOICES Group 3) or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).
- (b) Such determination shall include review of information submitted to the Bureau as part of the Safety Determination request, including, but not limited to:
1. Diagnosed complex acute or chronic medical conditions which require frequent, ongoing skilled and/or rehabilitative interventions and treatment by licensed professional staff;
  2. A pattern of recent falls resulting in injury or with significant potential for injury;

3. An established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions;
4. Recent nursing facility admissions, including precipitating factors and length of stay;
5. An established pattern of self-neglect that increases risk to personal health, safety and/or welfare requiring involvement by law enforcement or Adult Protective Services;
6. A determination by a community-based residential alternative provider that the Applicant's needs can no longer be safely met in a community setting; and
7. The need for and availability of regular, reliable natural supports, including changes in the physical or behavioral health or functional status of family or unpaid caregivers.

(126) Self-Determination ID Waiver. Tennessee's Self Determination Waiver under Section 1915(c) of the Social Security Act.

ETC.

#### 1200-13-01-.05 TENNCARE CHOICES PROGRAM.

~~(6) Advance Determinations that an Applicant Would Not Qualify to Enroll in CHOICES Group 3 (including Interim CHOICES Group 3).~~

- ~~(a) For purposes of the Need for Inpatient Nursing Care, Effective July 1, 2012, as specified in TennCare Rule 1200-13-01-10(4)(b)(2)(i)(II) and 1200-13-01-10(4)(b)(2)(ii)(II), Advance Determination by TennCare that a CHOICES Applicant would not qualify for enrollment into CHOICES Group 3 shall be made only if all of the following criteria are met:~~
- ~~1. The Applicant has a total acuity score of at least six (6) but no more than eight (8);~~
  - ~~2. The Applicant has an individual acuity score of at least three (3) for the Orientation measure;~~
  - ~~3. The Applicant has an individual acuity score of at least two (2) for the Behavior measure;~~
  - ~~4. The absence of intervention and supervision for dementia-related behaviors at the frequency specified in the PAE would result in imminent and serious risk of harm to the Applicant and/or others (documentation of the specific behaviors, the frequency of such behaviors, and the imminence and seriousness of risk shall be required); and~~
  - ~~5. There is sufficient evidence, as required and determined by TennCare, to demonstrate that the necessary intervention and supervision needed by the person cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), services available through~~

Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers.

(b) Documentation required to support an Advance Determination for Applicants enrolled in TennCare shall include all of the following:

1. A comprehensive needs assessment performed by an MCO Care Coordinator pursuant to requirements set forth in the MCO's Contractor Risk Agreement, including:

(i) An assessment of the Member's physical, behavioral, functional, and psychosocial needs;

(ii) An assessment of the Member's home environment in order to identify any modifications that may be needed, and to identify and address any issues that may affect the Member's ability to be safely served in the community;

(iii) An assessment of the Member's Natural Supports, including care being provided by family members and/or other caregivers, and LTSS the Member is currently receiving (regardless of payer), and whether there is any anticipated change in the Member's need for such care or services or the availability of such care or services from the current caregiver or payer; and

(iv) An assessment of the physical health, behavioral health, and LTSS and other social support services and assistance (e.g., housing or income assistance) that are needed to ensure the Member's health, safety and welfare in the community and to prevent the need for institutional placement. Such assessment shall specify the specific tasks and functions for which assistance is needed by the Member, the frequency with which such tasks must be performed, and the amount of paid assistance necessary to perform these tasks;

2. A person-centered plan of care developed by the MCO Care Coordinator which specifies the CHOICES HCBS that would be necessary and that would be approved by the MCO safely support the person in the community, as well as non-CHOICES HCBS available through TennCare (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers (or attestation that the person could not be safely supported in the community with any combination of services and supports, as applicable);

3. An explanation regarding why an array of covered services and supports, including CHOICES HCBS up to the Expenditure Cap of \$15,000 and non-CHOICES HCBS (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers would not be sufficient to safely meet the person's needs in the community;

4. A detailed explanation of:

(i) The Member's living arrangements and the services and supports the Member has received for the six (6) months prior to application for CHOICES, including non-CHOICES HCBS available through TennCare (e.g., home health), services available through Medicare, private insurance

or other funding sources, and unpaid supports provided by family members and other caregivers; and

- (ii) ~~Any recent significant event(s) or circumstances that have impacted the Applicant's need for services and supports, including how such event(s) or circumstances would impact the person's ability to be safely supported within the array of covered services and supports that would be available if the person were enrolled in CHOICES Group 3.~~
- (c) ~~Documentation required to support an Advance Determination for Applicants not enrolled in TennCare at the time the PAE is submitted shall include all of the items specified in Subparagraph (b) above, except as follows:~~
  - 1. ~~A comprehensive assessment, including an assessment of the Applicant's home environment, performed by the AAAD, or the most recent MDS assessment performed by a Nursing Facility contracted with one or more TennCare MCOs may be submitted in lieu of the MCO comprehensive needs assessment specified in Part (b)1. above.~~
  - 2. ~~The person-centered plan of care as described in Part (b)2. above shall not be required.~~

(6) Safety Determination Requests

- (a) For purposes of the Need for Inpatient Nursing Care, as specified in the Bureau Rule 1200-13-01-10(4)(b)2.(i)(II) and 1200-13-01-10(4)(b)2.(ii)(II), a Safety Determination by the Bureau regarding whether a CHOICES Applicant would qualify for enrollment into CHOICES Group 3 shall be made upon request of the Applicant, the Applicant's Representative, or the entity submitting the PAE, including the AAAD, MCO, NF, or PACE Organization if at least one of the following criteria are met.
  - 1. The Applicant has an approved total acuity score of at least five (5) but no more than eight (8);
  - 2. The Applicant has an approved individual acuity score of at least three (3) for the Orientation measure and the absence of frequent intermittent or continuous intervention and supervision would result in imminent and serious risk of harm to the Applicant and/or others (documentation of the impact of such deficits on the Applicant's safety, including information or examples that would support and describe the imminence and seriousness of risk shall be required);
  - 3. The Applicant has an approved individual acuity score of at least two (2) for the Behavior measure; and the absence of intervention and supervision for behaviors at the frequency specified in the PAE would result in imminent and serious risk of harm to the Applicant and/or others (in addition to information submitted with the PAE, information or examples that would support and describe the imminence and seriousness of risk resulting from the behaviors shall be required);
  - 4. The Applicant has an approved individual acuity score of at least three (3) for the mobility or transfer measures or an approved individual acuity score of at least two (2) for the toileting measure, and the absence of frequent intermittent assistance for mobility and/or toileting needs would result in imminent and serious risk to the Applicant's health and safety (documentation of the mobility/transfer or toileting deficits and the lack of availability of assistance for mobility/transfer and toileting needs shall be required);

5. The Applicant has experienced a significant change in physical or behavioral health or functional needs or the Applicant's caregiver has experienced a significant change in physical or behavioral health or functional needs which impacts the availability of needed assistance for the Applicant;
  6. The Applicant has a pattern of recent falls resulting in injury or with significant potential for injury or a recent fall under circumstances indicating a significant potential risk for further falls;
  7. The Applicant has an established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions or a recent hospital or NF admission or episode of treatment in a hospital emergency department under circumstances sufficient to indicate that the person may not be capable of being safely maintained in the community (not every hospital or NF admission or emergency department episode will be sufficient to indicate such);
  8. The Applicant's behaviors or a pattern of self-neglect has created a risk to personal health, safety and/or welfare that has prompted intervention by law enforcement or Adult Protective Services (APS). A report of APS or law enforcement involvement shall be sufficient by itself to require the conduct of a Safety Determination (but not necessarily the approval of a Safety Determination).
  9. The Applicant has recently been discharged from a community-based residential alternative setting (or such discharge is pending) because the Applicant's needs can no longer be safely met in that setting.
  10. The Applicant is a CHOICES Group 1 or Group 2 member or PACE member enrolled on or after July 1, 2012 (pursuant to level of care rules specified in 1200-13-01-10(4)(b)2.(i) and (ii)) and has been determined upon review to no longer meet nursing facility level of care based on a total acuity score of 9 or above.
  11. The applicant has diagnosed complex acute or chronic medical conditions which require frequent, ongoing skilled and/or rehabilitative interventions and treatment by licensed professional staff.
  12. The Applicant's MCO has determined, upon enrollment into Group 3 based on a PAE submitted by another entity, that the Applicant's needs cannot be safely met within the array of services and supports available if enrolled in Group 3 (see 1200-13-01(125)), such that a higher level of care is needed.
- (b) Any of these criteria shall be sufficient to warrant review of a Safety Determination request by the Bureau; however no criterion shall necessarily be sufficient, in and of itself, to justify that such Safety Determination request (and NF LOC) will be approved. The Bureau may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which the Bureau determines may impact the person's ability to be safely served in CHOICES Group 3, along with sufficient medical evidence to make a safety determination. The Bureau's Safety Determination shall be based on a review of the medical evidence in its entirety, including consideration of the Applicant's medical and functional needs, and the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.

- (c) PAEs may be submitted by more than one entity on behalf of an applicant. If Entity #1 (e.g., the MCO) believes that an applicant's needs can be safely met if enrolled in Group 3 and a Safety Determination is not needed for the applicant, but Entity #2 (e.g., the NF) believes that a Safety Determination is appropriate, then Entity #2 (e.g., the NF) may also submit a PAE on behalf of the applicant, along with a completed Safety Determination request, to the Bureau for review.
- (d) If one or more of the criteria specified in (a) above are met and the medical evidence received by the Bureau is insufficient to make a Safety Determination, the Bureau may request a face-to-face assessment by the AAAD (for non Medicaid-eligible Applicants), the MCO (for Medicaid-eligible Applicants), or other designee in order to gather additional information needed by the Bureau to make a final Safety Determination. In such instances, the PAE shall be deemed incomplete, and the time for disposition of the PAE shall be tolled for a reasonable period of time (not to exceed 10 business days, except when such delay is based on the reasonable needs or request of the Applicant, and only for a specific additional period not to exceed a total period of 30 calendar days, occasioned by the Applicant's needs or request) while such additional evidence is gathered.
- (e) Documentation required to support a Safety Determination request shall include all of the following:
1. A completed PAE, including detailed explanation of each ADL or related deficiency, as required by the Bureau, a completed Safety Determination request, and medical evidence sufficient to support the functional and related deficits identified in the PAE and the health and safety risks identified in the Safety Determination request;
  2. A comprehensive needs assessment which shall include all of the following:
    - (i) An assessment of the Applicant's physical, behavioral, and psychosocial needs not reflected in the PAE, including the specific tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, and the Applicant's need for safety monitoring and supervision;
    - (ii) The Applicant's living arrangements and the services and supports the Applicant has received for the six (6) months prior to submission of the Safety Determination request, including unpaid care provided by family members and other caregivers, paid services and supports the Applicant has been receiving regardless of payer (e.g., non-CHOICES HCBS available through TennCare such as home health and services available through Medicare, private insurance or other funding sources); and any anticipated change in the availability of such care or services from the current caregiver or payer; and
    - (iii) Detailed explanation regarding any recent significant event(s) or circumstances that have impacted the Applicant's need for services and supports, including how such event(s) or circumstances impact the Applicant's ability to be safely supported within the array of covered services and supports that would be available if the Applicant were enrolled in CHOICES Group 3;
  3. A person-centered plan of care developed by the MCO Care Coordinator, NF, or PACE Organization (i.e., the entity submitting the Safety Determination request) which specifies the tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, the Applicant's

need for safety monitoring and supervision; and the amount (e.g., minutes, hours, etc.) of paid assistance that would be necessary to provide such assistance; and that would be provided by such entity upon approval of the Safety Determination. (A plan of care is not required for a Safety Determination submitted by the AAAD.) In the case of a Safety Determination request submitted by an MCO or AAAD for a NF resident, the plan of care shall be developed in collaboration with the NF, as appropriate; and

4. An explanation regarding why an array of covered services and supports, including CHOICES HCBS up to the Expenditure Cap of \$15,000 and non-CHOICES HCBS (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers would not be sufficient to safely meet the Applicant's needs in the community.

(f) Approval of a Safety Determination Request

1. A Safety Determination request shall be approved if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through the Bureau (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.
2. When a Safety Determination request is approved, the Applicant's NF LOC eligibility shall be approved (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).
3. If enrolled in CHOICES Group 1 or 2 or in PACE based upon approval of a Safety Determination request, the NF, MCO, or PACE Organization, respectively, shall implement any plan of care developed by such entity and submitted as part of the Safety Determination request to demonstrate the services needed by the Applicant, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care and signed by the Applicant (or authorized representative).
4. The lack of availability of suitable community housing or the need for assistance with routine medication management shall not be sufficient by itself to justify approval of a Safety Determination request.

(g) Denial of a Safety Determination Request.

1. Pursuant to Rule 1200-13-01-.10(7)(b), when a PAE is denied, including instances where a Safety Determination has been requested and denied, a written Notice of denial shall be sent to the Applicant and, where applicable, to the Designated Correspondent. In instances where such denial is based in part on a Safety Determination that has been requested and denied, such Notice shall advise the Applicant of the Bureau's LOC decision, including denial of the Safety Determination request. This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within 30 calendar days.

2. If enrolled in CHOICES Group 3 based upon denial of a Safety Determination Request, the MCO shall implement any plan of care developed by the MCO and submitted as part of the Safety Determination process to demonstrate that the Applicant's needs can be safely met in Group 3, including covered medically necessary CHOICES HCBS and non-CHOICES HCBS available through TennCare and cost-effective alternative services upon which denial of the Safety Determination was based, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care and signed by the Applicant (or authorized representative).

(h) Duration of Nursing Facility Level of Care Based on an Approved Safety Determination Request

1. Pursuant to 1200-13-01-.10(2)(h), Nursing Facility level of care based on an approved Safety Determination request may be approved by the Bureau for an open ended period of time or a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3. This may include periods of less than 30 days as appropriate, including instances in which it is determined that additional post-acute inpatient treatment of no more than 30 days is needed for stabilization, rehabilitation, or intensive teaching as specified in the plan of care following an acute event, newly diagnosed complex medical condition, or significant progression of a previously diagnosed complex medical condition in order to facilitate the Applicant's safe transition back to the community.
2. Pursuant to Rule 1200-13-01-.10(7)(f), when a PAE for NF LOC is approved for a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3, the Applicant shall be provided with a Notice of appeal rights, including the opportunity to submit an appeal within 30 calendar days of receipt of this notice. Nothing in this section shall preclude the right of the Applicant to submit a new PAE (including a new Safety Determination request) establishing medical necessity of care before the Expiration Date has been reached or anytime thereafter.

**1200-13-01-.10 MEDICAL (LEVEL OF CARE) ELIGIBILITY CRITERIA FOR TENNCARE REIMBURSEMENT OF CARE IN NURSING FACILITIES, CHOICES HCBS AND PACE.**

(3) Medicaid Reimbursement.

- (a) A NF that has entered into a provider agreement with a TennCare MCO is entitled to receive Medicaid reimbursement for covered services provided to a NF Eligible if:
  1. The NF has completed the PASRR process as described in 1200-13-01-.10(2)(i) above and pursuant to 1200-13-01-.23.
  2. The Bureau has received an approvable PAE for the person within ten (10) calendar days of the PAE Request Date or the physician certification date, whichever is earlier. The PAE Approval Date shall not be more than ten (10)

days prior to date of submission of an approvable PAE. An approvable PAE is one in which any deficiencies in the submitted application are cured prior to disposition of the PAE.

3. The NF has entered into the TennCare PreAdmission Evaluation System (TPAES) a Medicaid Only Payer Date.
  4. The person has been enrolled into CHOICES Group 1.
  5. For a retroactive eligibility determination, the Bureau has received a Notice of Disposition or Change and has received an approvable request to update an approved, unexpired PAE within thirty (30) calendar days of the mailing date of the Notice of Disposition or Change, so long as the person has remained in a NF since the PAE was completed (except for short-term hospitalization). The effective date of payment for NF services shall not be earlier than the PAE Approval Date of the original approved, unexpired PAE that has been updated.
  6. If the NF participates in the Enrollee's MCO, reimbursement will be made by the MCO to the NF as a Network Provider. If the NF does not participate in the Enrollee's MCO, reimbursement will be made by the MCO to the NF as a non-participating provider, in accordance with Rule 1200-13-01-.05(10).
- (b) Any deficiencies in a submitted PAE application must be cured prior to disposition of the PAE to preserve the PAE submission date for payment purposes.
1. Deficiencies cured after the PAE is denied but within thirty (30) days of the original PAE submission date will be processed as a new application, with reconsideration of the earlier denial based on the record as a whole (including both the original denied application and the additional information submitted). If approved, the effective date of PAE approval can be no more than ten (10) days prior to the date of receipt of the information which cured the original deficiencies in the denied PAE. Payment will not be retroactive back to the date the deficient application was received or to the date requested in the deficient application.
  2. Once a PAE has been denied, the original denied PAE application must be resubmitted along with any additional information which cures the deficiencies of the original application. Failure to include the original denied application may delay the availability of Medicaid reimbursement for NF services.
- (c) The earliest date of Medicaid reimbursement for care provided in a NF shall be the date that all of the following criteria are met:
1. Completion of the PASRR process, as described in 1200-13-01-.10(2)(i) above and pursuant to 1200-13-01-.23;
  2. The effective date of level of care eligibility as reflected by the PAE Approval Date;
  3. The effective date of Medicaid eligibility;
  4. The date of admission to the NF; and
  5. The effective date of enrollment into CHOICES Group 1.
- ~~(d) PAE Effective Dates pertaining to Advance Determinations for persons not enrolled in TennCare when the PAE is submitted:~~

1. ~~An Advance Determination by TennCare that an Applicant not enrolled in TennCare at the time the PAE is submitted cannot be safely supported within the array of services and supports that would be available if the Applicant were enrolled in CHOICES Group 3, and approval of NF LOC, shall be effective for no more than thirty (30) days, pending a comprehensive assessment and POC developed by the MCO Care Coordinator once the Applicant is eligible for TennCare and enrolled in CHOICES Group 1 or 2.~~
  2. ~~If TennCare determines that an Advance Determination cannot be approved for an Applicant already admitted to a NF who is not enrolled in TennCare at the time the PAE is submitted, but upon enrollment into CHOICES Group 3 and receipt of comprehensive documentation submitted by the MCO, determines that the Applicant's needs cannot be safely and appropriately met in the community with the array of services and supports available in CHOICES Group 3, enrollment in CHOICES Group 3 will be terminated pursuant to 1200-13-01-.05(5)(b), and NF LOC will be approved. In such case, the effective date of NF LOC and, subject to requirements set forth in TennCare Rule 1200-13-01-.05(4)(a), enrollment into CHOICES Group 1 will be the date that NF LOC would have been effective had an Advance Determination been approved.~~
- (ed) Application of new LOC criteria. The new LOC criteria set forth in 1200-13-01-.10(4) shall be applied to all Applicants enrolled into CHOICES on or after July 1, 2012, based on their effective date of enrollment into the CHOICES program.
1. It is the date of enrollment into CHOICES and not the date of PAE submission, approval, or the PAE effective date which determines the LOC criteria that must be applied.
  2. TennCare may review a PAE that had been reviewed and approved based on the NF LOC criteria in place as of June 30, 2012, to determine whether an Applicant who will be enrolled into CHOICES on or after July 1, 2012, meets the new LOC criteria. However, all Applicants enrolled into CHOICES with an effective date of enrollment on or after July 1, 2012, shall meet the criteria in place at the time of enrollment, and in accordance with these rules.
- (fe) A NF that has entered into a provider agreement with a TennCare MCO and that admits a TennCare Eligible without completion of the PASRR process and without an approved PAE does so without the assurance of Medicaid reimbursement.
- (gf) TennCare reimbursement will only be made to a NF on behalf of the NF Eligible and not directly to the NF Eligible.
- (hg) A NF that has entered into a provider agreement with a TennCare MCO shall admit persons on a first come, first served basis, except as otherwise permitted by State and federal laws and regulations.
- (4) Level of Care Criteria for Medicaid Level 1 Reimbursement of Care in a Nursing Facility, CHOICES HCBS and PACE.
- (b) An Applicant must meet both of the following LOC criteria in order to be approved for TennCare-reimbursed care in a NF, CHOICES HCBS or PACE, as applicable:
    1. Medical Necessity of Care:

- (i) Applicants requesting TennCare-reimbursed NF care. Care in a NF must be expected to improve or ameliorate the Applicant's physical or mental condition, to prevent a deterioration in health status, or to delay progression of a disease or disability, and such care must be ordered and supervised by a physician on an ongoing basis.
  - (ii) Applicants requesting HCBS in CHOICES or PACE. HCBS must be required in order to allow the Applicant to continue living safely in the home or community-based setting and to prevent or delay placement in a NF, and such HCBS must be specified in an approved plan of care and needed on an ongoing basis.
    - (I) The need for one-time CHOICES HCBS is not sufficient to meet medical necessity of care for HCBS.
    - (II) If a Member's ongoing need for assistance with activities of daily living and/or instrumental activities of daily living can be met, as determined through the needs assessment and care planning processes, through the provision of assistance by family members and/or other caregivers, or through the receipt of services available to the Member through community resources (e.g., Meals on Wheels) or other payer sources (e.g., Medicare), the Member does not require HCBS in order to continue living safely in the home and community-based setting and to prevent or delay placement in a NF.
2. Need for Inpatient Nursing Care:

- (i) Applicants requesting TennCare-reimbursed NF care.

The Applicant must have a physical or mental condition, disability, or impairment that, as a practical matter, requires daily inpatient nursing care. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

- (I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or
  - (II) Meet one or more of the ADL or related criteria specified in 1200-13-01-10(4)(b)(2)(iii) on an ongoing basis and be determined by TennCare to not qualify for enrollment in CHOICES Group 3 (see TennCare Rule 1200-13-01-.05).
- (ii) Applicants eligible to receive care in a NF, but requesting HCBS in CHOICES Group 2 or PACE.

The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS or PACE, the Applicant would require and must qualify to receive NF services in order to remain eligible for HCBS. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

- (I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or

- (II) Meet one (1) or more of the ADL or related criteria specified in 1200-13-01-10(4)(b)(2)(iii) on an ongoing basis and be determined by TennCare to not qualify for enrollment in CHOICES Group 3 (see TennCare Rule 1200-13-01-.05).
- (iii) Applicants not eligible to receive care in a NF, but at risk of NF placement and requesting HCBS in CHOICES Group 3, including Interim CHOICES Group 3. The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS, the Applicant would not be able to live safely in the community and would be at risk of NF placement. The following criteria shall reflect the individual's Applicant's capabilities on an ongoing basis and not isolated, exceptional, or infrequent limitations of function in a generally independent person who is able to function with minimal supervision or assistance. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:
- ~~(I) Transfer. The Applicant is incapable of transfer to and from bed, chair, or toilet unless physical assistance is provided by others on an ongoing basis (daily or at least four days per week).~~
- ~~(II) Mobility. The Applicant requires physical assistance from another person for mobility on an ongoing basis (daily or at least four days per week). Mobility is defined as the ability to walk, using mobility aids such as a walker, crutch, or cane if required, or the ability to use a wheelchair if walking is not feasible. The need for a wheelchair, walker, crutch, cane, or other mobility aid shall not by itself be considered to meet this requirement.~~
- ~~(III) Eating. The Applicant requires gastrostomy tube feedings or physical assistance from another person to place food/drink into the mouth (daily or at least four days per week). Food preparation, tray set-up, and assistance in cutting up foods shall not be considered to meet this requirement.~~
- ~~(IV) Toileting. The Applicant requires physical assistance from another person to use the toilet or to perform incontinence care, ostomy care, or indwelling catheter care on an ongoing basis (daily or at least four days per week).~~
- ~~(V) Expressive and Receptive Communication. The Applicant is incapable of reliably communicating basic needs and wants (e.g., need for assistance with toileting; presence of pain) using verbal or written language; or the Applicant is incapable of understanding and following very simple instructions and commands (e.g., how to perform or complete basic activities of daily living such as dressing or bathing) without continual intervention (daily or at least four days per week).~~
- ~~(VI) Orientation. The Applicant is disoriented to person (e.g., fails to remember own name, or recognize immediate family members) or is disoriented to place (e.g., does not know residence is a NF) daily or at least four days per week.~~

- ~~(VII) Medication Administration. The Applicant is not mentally or physically capable of self-administering prescribed medications (daily or at least four days per week) despite the availability of limited assistance from another person. Limited assistance includes, but is not limited to, reminding when to take medications, encouragement to take, reading medication labels, opening bottles, handing to Applicant, and reassurance of the correct dose.~~
- ~~(VIII) Behavior. The Applicant requires persistent intervention (daily or at least four days per week) due to an established and persistent pattern of dementia-related behavioral problems (e.g., aggressive physical behavior, disrobing, or repetitive elopement).~~
- ~~(IX) Skilled Nursing or Rehabilitative Services. The Applicant requires daily skilled nursing or rehabilitative services at a greater frequency, duration, or intensity than, for practical purposes, would be provided through a daily home health visit.~~
- (I) Transfer. The Applicant is incapable of transfer to and from bed, chair, or toilet unless physical assistance is provided by others on an ongoing basis (daily or at least four days per week). Approval of this deficit shall require documentation of the medical condition(s) contributing to this deficit, as well as the specific type and frequency of transfer assistance required.
- (II) Mobility. The Applicant requires physical assistance from another person for mobility on an ongoing basis (daily or at least four days per week). Mobility is defined as the ability to walk, using mobility aids such as a walker, crutch, or cane if required, or the ability to use a wheelchair (manual or electric) if walking is not feasible. The need for a wheelchair, walker, crutch, cane, or other mobility aid shall not by itself be considered to meet this requirement. Approval of this deficit shall require documentation of the medical condition(s) contributing to this deficit, as well as the specific type and frequency of mobility assistance required.
- (III) Eating. The Applicant requires physical assistance with gastrostomy tube feedings or physical assistance or constant one-on-one observation and verbal assistance (reminding, encouraging) 4 or more days per week to consume prepared food and drink (or self-administer tube feedings, as applicable) or must be fed part or all of each meal. Food preparation, tray set-up, assistance in cutting up foods, and general supervision of multiple residents shall not be considered to meet this requirement. Approval of this deficit shall require documentation which supports the need for such intervention, along with evidence that in the absence of such physical assistance or constant one-on-one observation and verbal assistance, the Applicant would be unable to self-perform this task. For PAEs submitted by the AAAD (or entity other than an MCO, NF, or PACE Organization), an eating or feeding plan specifying the type, frequency and duration of supports required by the Applicant for feeding, along with evidence that in the absence of such physical assistance or constant one-on-one observation and verbal assistance, the Applicant would be unable to self-perform this task shall be required.

- (IV) Toileting. The Applicant requires physical assistance from another person to use the toilet or to perform incontinence care, ostomy care, or catheter care on an ongoing basis (daily or at least four days per week). Approval of this deficit shall require documentation of the specific type and frequency of toileting assistance required.
- (V) Expressive and Receptive Communication. The Applicant is incapable of reliably communicating basic needs and wants (e.g., need for assistance with toileting; presence of pain) in a manner that can be understood by others, including through the use of assistive devices; or the Applicant is incapable of understanding and following very simple instructions and commands without continual intervention (daily or at least four days per week). Approval of this deficit shall require documentation of the medical condition(s) contributing to this deficit, as well as the specific type and frequency of communication assistance required.
- (VI) Orientation. The Applicant is disoriented to person (e.g., fails to remember own name, or recognize immediate family members), place (e.g., does not know residence is a NF), or event/situation (e.g., is unaware of current circumstances in order to make decisions that prevent risk of harm) daily or at least four days per week. Approval of this deficit shall require documentation of the specific orientation deficit(s), including the frequency of occurrence of such deficit(s), and the impact of such deficit(s) on the Applicant.
- (VII) Medication Administration. The Applicant is not cognitively or physically capable (daily or at least four days per week) of self-administering prescribed medications at the prescribed schedule despite the availability of limited assistance from another person. Limited assistance includes, but is not limited to, reminding when to take medications, encouragement to take, reading medication labels, opening bottles, handing to Applicant, reassurance of the correct dose, and the use of assistive devices including a prepared medication box. An occasional lapse in adherence to a medication schedule shall not be sufficient for approval of this deficit; the Applicant must have physical or cognitive impairments which persistently inhibit his or her ability to self-administer medications. Approval of this deficit shall require evidence that such interventions have been tried or would not be successful, and that in the absence of intervention, the Applicant's health would be at serious and imminent risk of harm.
- (VIII) Behavior. The Applicant requires persistent staff or caregiver intervention and supervision (daily or at least four days per week) due to an established and persistent pattern of behavioral problems which are not primarily related to a mental health condition (for which mental health treatment would be the most appropriate course of treatment) or a substance abuse disorder (for which substance abuse treatment would be the most appropriate course of treatment), and which, absent such continual intervention and supervision, place the Applicant or others at imminent and serious risk of harm. Such behaviors may include physical aggression (including assaultive or self-injurious behavior, destruction of property, resistive or combative to personal and other care, intimidating/threatening, or sexual acting out or exploitation) or inappropriate or unsafe behavior (including

disrobing in public, eating non-edible substances, fire setting, unsafe cooking or smoking, wandering, elopement, or getting lost). Approval of this deficit shall require documentation of the specific behaviors and the frequency of such behaviors.

(IX) Skilled Nursing or Rehabilitative Services. The Applicant requires daily skilled nursing or rehabilitative services at a greater frequency, duration, or intensity than, for practical purposes, would be provided through daily home health visits. Approval of such skilled nursing or rehabilitative services shall require a physician's order and other documentation as specified in the PAE. Level 2 reimbursement for rehabilitative services and acuity points for such rehabilitative services shall not be approved for chronic conditions, exacerbations of chronic conditions, weakness after hospitalization, or maintenance of functional status, although the NF shall be required to ensure that appropriate services and supports are provided based on the individualized needs of each resident.

GW10114324

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 02/24/2015 (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: 09/17/14

Rulemaking Hearing(s) Conducted on: (add more dates). 11/18/14

Date: 2/24/2015

Signature: [Handwritten Signature]

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare  
Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 2/24/2015

Notary Public Signature: Cheryl D. Kline

My commission expires on: 'AUG 23 2016'

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

[Handwritten Signature]  
Herbert H. Stately III  
Attorney General and Reporter  
4/10/2015  
Date

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PUBLICATIONS

Filed with the Department of State on: 4/14/15

Effective on: 7/13/15

[Handwritten Signature]  
Tre Hargett  
Secretary of State