G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Education
SUBJECT:	School Board Training
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-2-202
EFFECTIVE DATES:	December 21, 2015 to June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	T.C.A. § 49-2-202(a)(6) requires that all local school board members be properly trained during their service on the Board of Education and gives the State Board of Education the power to set minimum requirements for local school board member training. This rule change was recommended to the State Board by the School Board Academy Advisory Committee. It requires newly elected local school board members to participate in a fourteen (14) hour orientation training during their first year in office, in addition to the seven (7) hour training required annually of all board members. This rule change brings the rule in line with past practice of the School Board Academy. The additional fourteen (14) hours of training for new board members are to be completed over the course of a two-day orientation session.

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.

5

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

For Department of State Use Only

Sequence Number: 09-35-15
Rule ID(s): 6046
File Date: 9/22/15
Effective Date: 12/21/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0520-01-02	Administrative Rules and Regulations
Rule Number	**Rule Title**
0520-01-02-.11	School Board Training

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

0520-01-02-.11 SCHOOL BOARD TRAINING.

(1) Every member of a local board of education shall participate annually in seven (7) -hours of training provided by the School Board Academy. In addition, all newly-elected members of a local board of education shall attend a fourteen (14) hour orientation during their first year in office.

(2) The School Board Academy shall be administered by the State Department of Education.

(3) The annual program of the School Board Academy will consist of modules approved by the State Board of Education. The Tennessee School Boards Association (TSBA) shall develop and conduct the majority of the approved modules.

(4) A School Board Academy Advisory Committee shall be established by the State Board of Education. The Advisory Committee will be responsible for evaluating academy programs. The Advisory Committee will also be responsible for recommending an annual program plan for the academy prior to the beginning of each school year for approval by the State Board of Education. The Advisory Committee will include the Executive Director and the President of the Tennessee School Boards Association, a member of the State Board of Education, the President of the Tennessee Organization of School Superintendents, and the Commissioner of Education or his designee. It will also include others appointed by the State Board of Education for terms designated by the State Board of Education.

* 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				
Tucker	X				
Troutt	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/24/2015, 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: 9/3/15

Signature: [signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 9/3/15.

Notary Public Signature: [signature]

MY COMMISSION EXPIRES: January 9, 2016

My commission expires on:

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

[signature]
Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

RECEIVED 2015 SEP 22 AM 11:43 SECRETARY OF STATE PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 9/22/15

Effective on: 12/21/15

[signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Education
SUBJECT:	Employment Standards to teach Personal Finance
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302 and Tennessee Code Annotated, Section 49-5-108
EFFECTIVE DATES:	December 21, 2015 to June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	On June 22, 2007, the State Board of Education unanimously adopted an employment standards rule that teachers and districts would need to meet in order to teach Personal Finance. To date, Local Education Agencies have complied with the rule and the Tennessee Department of Education has provided training to meet the needs of districts. The agency reports that: upon review, the rule fails to appear in the Administrative Register maintained by the Secretary of State. In order to have the rule properly postured, the language needs to go through the full rule promulgation process. As such, the Board voted at its July 24, 2015 meeting to adopt these employment standards for personal finance, reaffirming the vote taken in 2007.

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.

6

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

For Department of State Use Only

Sequence Number: 09-36-15
Rule ID(s): 6047
File Date: 9/22/15
Effective Date: 12/21/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

Revision Type (check all that apply):

X Amendment
X New
__ Repeal

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

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

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

CHAPTER 0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

0520-01-02-.03 EMPLOYMENT STANDARDS

(1) A teacher or principal shall hold a valid Tennessee teacher license with an endorsement covering the work assignment as provided in T.C.A. Title 49, Chapter 5.

(2) A teacher may teach up to two sections of one course outside the area of endorsement. For a teacher to teach more than one course or more than two sections of one course outside the area of endorsement, an employment standard waiver must be requested and approved. Teachers assigned two or more sections of a course outside the area of endorsement before June 30, 1976 may continue to teach those courses until a new assignment is made by the local school officials.

(3) A classroom teacher with an endorsement in elementary education or early childhood education is eligible to teach any subject, including art, music, and physical education, in the grades covered by the endorsement as part of the teacher's regular classroom assignment. However, a teacher with a professional license pursuant to State Board Rule 0520-02-04-.01(2)(c), an endorsement to teach through at least grade eight (8), a passing score on the middle school math PRAXIS, and attendance at state-approved training may teach Algebra I at any grade level.

(4) A teacher in grades K through 8 who teaches art, music, or physical education the major portion of the day shall be endorsed in art, music, or physical education respectively. However, a teacher endorsed in elementary education who was assigned to teach music, art, or physical education the major portion of the day during the 1990-91 school year may continue to teach the specific course until such time as a new assignment is made by the local school officials.

(5) A teacher with a license endorsed in a subject 7-12 may teach any subject in grade six covered by the endorsement.

(6) Principals.

(a) Effective September 15, 2009, assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed or be enrolled in a State Board approved instructional leadership preparation program.

(b) A principal shall hold one of the following endorsements: beginning administrator, professional administrator, administration/supervision, or principal.

(c) Individuals employed for the first time as a principal beginning July 1, 1994, shall hold an appropriate endorsement and shall meet the requirements for test/assessment specified by the State Board of Education.

(d) Individuals employed for the first time as a principal beginning July 1, 1994, shall be employed with the beginning administrator, administration/supervision or principal endorsements for a maximum of three years; after three years, the principal must be recommended for and attain the professional administrator endorsement for continued employment as a principal. In the event that a candidate changes employment prior to obtaining the professional administrator

endorsement, the candidate may be employed again as a beginning principal prior to obtaining the professional administrator endorsement.

(e) A principal, with the approval of the superintendent, shall establish and implement an annual plan for personal professional development in accordance with guidelines established by the State Board of Education.

(f) A principal of a school with less than 225 students shall not be required to meet the requirements of (a), (b), or (c).

(g) A principal holding an endorsement in administration/supervision, supervisor of instruction, or principal on August 31, 1994, shall not be required to meet the requirements of (b) or (c).

(7) Teaching Personnel in Gifted Education

(a) A classroom teacher in special or general education providing direct instruction to students identified by state criteria as intellectually gifted students shall meet the following employment standards:

1. The teacher shall be endorsed in the appropriate general education area or must hold the appropriate special education endorsement and

2. The teacher shall meet one of the following standards:

(i) The teacher shall work in consultation with a teacher who meets the standards for consulting teachers listed in (b) or

(ii) The teacher shall have completed six semester hours of college or university course work or the equivalent contact hours in teaching gifted students approved by the Department of Education or

(iii) The teacher shall hold an endorsement in gifted education.

(b) A consulting teacher in special or general education who works with other teachers or who teaches classes especially designed for gifted students in grades prekindergarten through twelve shall meet the following employment standards:

1. The consulting teacher shall be endorsed in the appropriate general education area or must hold the appropriate special education endorsement and

2. The consulting teacher shall meet one of the following standards:

(i) The consulting teacher shall have completed six semester hours of college or university coursework or the equivalent contact hours in teaching gifted students approved by the Department of Education or

(ii) The consulting teacher shall hold an endorsement in gifted education.

(c) An individual who serves as a gifted education coordinator in special or general education shall meet one of the following employment standards:

1. The individual shall hold an educator license with an endorsement in gifted education or

2. The individual shall hold an educator license and shall have completed six semester hours of college or university coursework or the equivalent contact hours in teaching gifted students approved by the Department of Education or

3. The individual shall hold a license endorsed in one of the following, beginning administrator, professional administrator, administration/supervision or supervisor of instruction.

A classroom teacher who was endorsed in special education prior to September 1, 1989 and who served gifted students prior to July 1, 1988, may continue to teach eligible intellectually gifted students, provided that they have completed an in-service training program approved by the Department of Education.

(8) Teachers of Computer Technology, Grades 9-12.

(a) A teacher of personal computing, computer productivity applications, and interactive multimedia design shall have a valid Tennessee teacher license with an endorsement in grades 7-12 and shall have completed the equivalent of six semester hours of computer course work or have the appropriate endorsement.

(b) A teacher of BASIC and adventures in computing shall have a valid Tennessee teacher license with an endorsement grades 7-12 and shall have completed the equivalent of six semester hours of computer course work including at least one programming language.

(c) A teacher of programming languages and advanced placement computer science shall have a valid Tennessee teacher license with an endorsement grades 7-12 and shall have completed the equivalent of 12 semester hours of computer course work including six semester hours of programming.

(9) Career and Technical Education

(a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.

(b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.

(c) A teacher of health science education shall have completed one (1) year of successful employment experience, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.

(d) Other occupational educators shall be a high school graduate or higher. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state approved institution, or other accredited public or private institution, may also be evaluated. The amount of credit awarded for work experience through postsecondary education shall depend on the endorsement and related industry.

(10) Other Instructional and Related Personnel.

(a) A school counselor shall hold the appropriate license and endorsement for the grade levels assigned.

(b) A school psychologist shall hold a valid license with the school psychologist endorsement.

(c) A school social worker shall hold a license with the school social work endorsement.

(d) A supervisor of instruction shall hold a valid Tennessee license with one of the following endorsements: beginning administrator, professional administrator, administrator/ supervisor, or supervisor of instruction.

1. Beginning July 1, 1994, individuals employed for the first time as a supervisor of instruction shall hold an appropriate endorsement and shall meet the requirements for test/assessment specified by the State Board of Education.

2. Beginning July 1, 1994, individuals employed for the first time as a supervisor of instruction shall be employed with the beginning administrator, administrator/supervisor, or supervisor of instruction endorsements for a maximum of three years. After three years, for continued employment as a supervisor of instruction, the supervisor of instruction must be recommended for and attain the professional administrator endorsement. In the event that the candidate changes employment prior to obtaining the professional administrator endorsement, the candidate may be employed again as a beginning supervisor of instruction prior to obtaining the professional administrator endorsement.

3. Any person who performs the duties of a supervisor of instruction, regardless of the title of such person's position, must have the endorsement or license required of a supervisor of instruction.

4. Persons having an endorsement as a supervisor of instruction as of August 31, 1994, shall be issued a professional administrator license and shall not be required to meet the requirements of 1 or 2.

(e) A supervisor of special education shall:

1. Hold a valid Tennessee license with one of the following endorsements: beginning administrator, administrator/supervisor, or supervisor of instruction and shall have three years of experience with programs for children with disabilities; or

2. Hold a master's degree and a valid Tennessee teacher license with endorsement in at least one area of special education and shall have three years of experience with programs for children with disabilities.

(f) Any person who performs the duties of a supervisor of instruction, regardless of the title of such person's position, must have the endorsement or license required of a supervisor of instruction.

(g) Persons having an endorsement as supervisor of instruction as of August 31, 1994, shall be issued a professional administrator license.

(h) Compensatory Education Personnel (Chapter 1).

1. A project director or supervisor of the subject areas and/or program areas shall hold endorsement as supervisor of instruction, administration/supervision or superintendent.

2. A Chapter I evaluator shall hold a valid Tennessee teacher license or shall meet employment standards as a school psychologist or school counselor.

3. Other professional personnel employed in Chapter I programs not otherwise covered by licensure or employment standards shall possess a valid Tennessee teacher license.

(i) Persons holding career and technical education supervisory positions, including local directors, supervisors, coordinator specialists, assistant principals for career and technical education, and center administrators, shall have one of the following sets of qualifications:

1. A bachelor's degree in career and technical education from an accredited four year college or university, three (3) years of teaching experience in an approved career and technical education program and two (2) years of appropriate employment experience in a recognized occupation, or

2. A bachelor's degree with a career and technical education endorsement, three (3) years teaching experience, two (2) years of appropriate work experience, and completion of (by July 1, 2008 or within a three-year period from the date of employment) the required matrix of career and technical core competencies for professional development, or

3. An endorsement as a PreK-12 administrator or secondary supervisor or principal and completion of (by July 1, 2008 or within a three-year period from the date of employment) the required matrix of career and technical core competencies for professional development.

(j) Educational assistants shall have not less than a high school education or an equivalency high school diploma; those who have completed one or more years of college shall be given preference in employment.

(k) A superintendent appointed by the local board of education elected by the general public shall only be required to have a baccalaureate degree. Any elected superintendent shall meet all qualifications set forth in these rules and regulations, which include at least a master's degree with emphasis in administration supervision and related courses.

(l) Individuals employed by local school systems to provide educational interpreting for students who are deaf shall satisfy the requirements defined below beginning September 1, 1997.

1. An Interpreter/Educational Assistant shall be a high school graduate or equivalent as determined by performance on the General Education Development (GED) Test: and successfully complete training or

screening developed by the State Department of Education and approved by the State Board of Education.

2. An Interpreter/Educational Tutor shall have completed a minimum of 48 semester hours of coursework at a postsecondary level: and successfully complete training or screening developed by the State Department of Education and approved by the State Board of Education.

3. An Educational Interpreter/Instructor shall have completed a bachelors degree and a program in educational interpreting or hold a valid teacher license; and successfully complete training or screening developed by the State Department of Education and approved by the State Board of Education.

4. Compensation of an individual providing educational interpreting shall be determined by the local school system and shall take into consideration the level of preparation, training, and work requirements.

(m) An audiologist shall hold a license with audiologist endorsement.

(n) A school speech-language pathologist shall hold a school service personnel license with the school speech language pathologist endorsement pursuant to 0520-02-04-.12(2).

(o) A school speech-language teacher hired by a local school system to work under the direction of a school speech-language pathologist shall hold a school speech-language teacher license (A or B), a teacher license with a school speech-language teacher endorsement or a teacher license with an endorsement 068 or 464 pursuant to 0520-02-03- .01(20).

(11) Personal Finance

(a) A teacher of personal finance shall hold a valid secondary Tennessee teacher license and

1. Complete a minimum of fourteen (14) clock hours training provided by *the State Department of Education on use of the state adopted Personal* Finance curriculum or

2. Complete fourteen (14) clock hours training on Personal Finance provided by State Department of Education- approved organizations and/or institutions of higher education

(b) Teachers licensed to teach Economics, Business, Marketing, and Family and Consumer Sciences meet the employment standards and may be exempted from the training requirements of subparagraph (a).

* 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				
Tucker	X				
Troutt	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/24/2015, 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: 9/3/15

Signature: Sara Heyburn

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 9/3/15

Notary Public Signature: Phyllis E Childress

MY COMMISSION EXPIRES: January 9, 2016

My commission expires on:

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

RECEIVED
2015 SEP 22 AM 11:48
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/22/15

Effective on: 12/21/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board of Dispensing Opticians
SUBJECT:	Continuing Education
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-14-106
EFFECTIVE DATES:	December 10, 2015 to June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 0480-01-.12(1)(a) is being amended to add a requirement that each licensee obtain one (1) hour of continuing education in jurisprudence each calendar year. On February 4, 2014 the Board promulgated an amendment to Rule 0480-01-.12(1)(a) which required every licensee to complete eight (8) hours of continuing education each calendar year. The current amendment adds a jurisprudence credit hour to the requirements.

Public Hearing Comments

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

There were no public comments, either written or oral.

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

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The rule amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule:

The rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and reporting requirements for small businesses:

The rule amendments do not establish any reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

There are no such requirements contained in the rule amendments.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses:

There are no such requirements contained in the rule amendments.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The rule amendments do not establish any standards that apply to small businesses.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The rule amendments create no entry barriers or other effects that would stifle legitimate entrepreneurial activity, curb innovation, or increase costs for legitimate businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Dispensing Opticians

Rulemaking hearing date: 01/28/2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   The proposed rules are not likely to produce any direct benefits or impose any costs on small business. Any costs would be minimal as the required hours of continuing education are only being increased by one hour.

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:**

   The proposed rule should not create any additional reporting, recordkeeping, or other administrative costs.

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

   The proposed rules are unlikely to have a significant effect on impacted small businesses and consumers. Any impact should be minimal because the Board is only seeking to add a requirement for one hour of jurisprudence to be obtained by licensees. If anything, the modified continuing education requirements will be beneficial to businesses and consumers as dispensing opticians will be better trained.

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:**

   N/A

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: N/A

   State: All health regulatory boards have the authority to set continuing education criteria.

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 amendments do not provide for any exemptions for small businesses.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-18-15
Rule ID(s): 6024
File Date: 9/11/15
Effective Date: 12/10/15

Rulemaking Hearing Rule(s) Filing Form

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

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

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

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

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

Chapter Number	**Chapter Title**
0480-01	General Rules Governing Dispensing Opticians
Rule Number	**Rule Title**
0480-01-.12	Continuing Education (CE)

(Rule 0480-01-.11, continued)

(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: four (4) hours in spectacles, two (2) hours in contact lenses, and two (2) hours in optional courses.~~

(a) Each person licensed by the Board is required to complete nine (9) hours of continuing education during each calendar year which shall include: four (4) hours in spectacles, two (2) hours in contact lenses, one (1) hour in jurisprudence and two (2) hours in optional courses.

1. The one (1) hour jurisprudence credit may be obtained by either:

(i) Successfully completing the Board's Continuing Education Jurisprudence Credit examination; or

(ii) Attending one (1) morning session of a regularly scheduled meeting of the Board.

2. Licensees who attend one (1) morning session of a regularly scheduled meeting of the Board must sign the sign-in sheet, maintained by the Board's administrator. The licensee must record their name, license number, the time the licensee arrived at the Board meeting, and the time the licensee departed the Board meeting to receive one (1) hour of jurisprudence continuing education credit. The morning session shall be not less than 50 minutes.

(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

Formatted: Indent: Left: 0.75", Hanging: 1.13"

Formatted: Indent: Left: 0.75", Hanging: 1.13"

Formatted: Indent: Left: 0.75", Hanging: 0.75"

(Rule 0480-01-.12, continued)

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

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:

(Rule 0480-01-.12, continued)

(i) a course content description or outline.

(ii) names of all lecturers.

(iii) brief resume of all lecturers.

(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:

(Rule 0480-01-.12, continued)

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.

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

(Rule 0480-01-.12, continued)

3. Interactive Videoconferencing

(4) Violations

(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 (3) (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

(Rule 0480-01-.12, continued)

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 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. Amendment filed April 1, 2015; effective June 30, 2015.*

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.

* 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				
William G. DeCrow	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 Board of Dispensing Opticians on 01/28/2015, 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: *10/31/14*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/28/15*

Date: 02/02/2015

Signature:

Name of Officer: Matt Gibbs

Title of Officer: Assistant General Counsel
Department of Health

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

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

9/3/2015
Date

RECEIVED
2015 SEP 11 AM 10: 57
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 9/11/15

Effective on: 12/10/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 11 PM 3:51
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards and Exceptions
STATUTORY AUTHORITY:	29 United States Code Annotated, Section 667 and Tennessee Code Annotated, Section 50-3-201
EFFECTIVE DATES:	November 30, 2015 to June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules, there have been no substantive changes to the Occupational Safety and Health Standards.

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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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 does not have a projected impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-01-15
Rule ID(s): 6013-6015
File Date: 9/1/15
Effective Date: 11/30/15

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	**Rule Title**
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	**Rule Title**
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2015" to "January 1, 2016".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~July 1, 2015~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2016 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2015" to "January 1, 2016".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~July 1, 2015~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2016 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2015" to "January 1, 2016".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~July 1, 2015~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2016 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "July 1, 2015" to "January 1, 2016".

Existing Rule:

(1) As of ~~July 1, 2015~~, there are no exceptions.

Proposed Amended Rule:

(1) As of January 1, 2016, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

* 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 8/19/2015 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 8/19/2015

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

SHERYL MESSENGER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN

Subscribed and sworn to before me on: 8/19/2015

Notary Public Signature: Sheryl Messenger

My commission expires on: 7-8-2019

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

8/28/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/1/15

Effective on: 11/30/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP -1 AM 11:43
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Children's Services
DIVISION:	
SUBJECT:	Required Forms
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 36-1-111, Section 36-1-112 and Section 36-1-141
EFFECTIVE DATES:	September 11, 2015 to March 9, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This emergency rule establishes the mandatory forms promulgated by the Department of Children's Services in accordance with Tenn. Code Ann. § 36-1-141. This rule contains forms for collecting medical/social histories of children being surrendered; surrenders of children for adoption in Tennessee Courts or in another State or Territory or a foreign country or by an inmate of State or Federal correctional facility; for revocation of surrenders and parental consents; vetoes of contact in the future by the adopted person with the surrendering person or others; payment and fee disclosure requirements; certification of social and legal counseling, which may be requested by the surrender or consenting parent or legal guardian; consents for adoption by minors fourteen years of age and by guardians ad litem of such minors and disabled adults; and release of information for updated medical information.

Impact on Local Governments

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

(Insert statement here)

This change to the Rule, which is necessary to comply with Public Chapter No. 113 (2015), is not projected to have a fiscal impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-15-15
Rule ID(s): 10020
File Date (effective date): 09/11/15
End Effective Date: 03/09/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of Children's Services
Division:	Legal
Contact Person:	Helen Rodgers
Address:	7th Floor Cordell Hull 436 6th Ave. N. Nashville, TN
Zip:	37138
Phone:	615-741-1404
Email:	Helen.Rodgers@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

TCA § 4-5-208(a)(5) allows the filing of an emergency rule when the agency is required by an enactment of the general assembly. TCA § 36-1-141 requires individuals surrendering a child to use forms promulgated by DCS. Public Chapter No. 113, which took effect April 10, 2015, shortened the period of revocation for a surrender from 10 days to 3 days. An emergency rule change is needed, in order for the forms promulgated by DCS to be consistent with the change in the period of revocation.

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**
0250-07-13	Adoption Process Forms
Rule Number	**Rule Title**
0250-07-13-.03	Surrender Documents for Use in Surrenders to a Tennessee Licensed Child-Placing Agency or the Tennessee Department of Children's Services in these matters, in a Tennessee Court
0250-07-13-.04	Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents in a Tennessee Court
0250-07-13-.05	Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services in these matters, in Courts in Another State or Territory
0250-07-13-.06	Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents in a Court in Another State or Territory
0250-07-13-.07	Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services in the matters, Before United States Foreign Service Officer or Officer of the United States Armed Forces in a Foreign Country
0250-07-13-.08	Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents before a United States Foreign Service Officer or Officer of the United States Armed

0250-7-13-.03 SURRENDER DOCUMENTS FOR USE IN SURRENDERS TO A TENNESSEE LICENSED CHILD-PLACING AGENCY OR THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES IN THESE MATTERS, IN A TENNESSEE COURT.

0250-07-13-.03 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with:

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr)_____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____. ~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~
Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the ~~ten (10)~~ three (3) day period, the Tennessee Department of Children's Services or Licensed Child-Placing Agency will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.03 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with:

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.04 SURRENDER DOCUMENTS FOR USE IN SURRENDERS DIRECTLY TO PROSPECTIVE ADOPTIVE PARENTS IN A TENNESSEE COURT.

0250-07-13-.04 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with:

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the three (3) ~~ten (10)~~ day period, the prospective adoptive parents will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.04 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with:

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.05 SURRENDER DOCUMENTS FOR USE IN SURRENDERS TO A LICENSED CHILD- PLACING AGENCY OR THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES IN THESE MATTERS, IN COURT IN ANOTHER STATE OR TERRITORY.

0250-07-13-.05 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the ~~ten (10)~~ three (3) day period, the Tennessee Department of Children's Services or Licensed Child-Placing Agency will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.05 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.06 SURRENDER DOCUMENTS FOR USE IN SURRENDERS DIRECTLY TO PROSPECTIVE ADOPTIVE PARENTS IN A COURT IN ANOTHER STATE OR TERRITORY.

0250-07-13-.06 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the three (3) ~~ten (10)~~ day period, the prospective adoptive parents will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.06 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.07 SURRENDER DOCUMENTS FOR USE IN SURRENDERS TO A LICENSED CHILD- PLACING AGENCY OR THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES IN THESE MATTERS, BEFORE UNITED STATES FOREIGN SERVICE OFFICER OR OFFICER OF THE UNITED STATES ARMED FORCES IN A FOREIGN COUNTRY.

0250-07-13-.07 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the ~~ten (10)~~ three (3) day period, the Tennessee Department of Children's Services or Licensed Child-Placing Agency will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.07 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.08 SURRENDER DOCUMENTS FOR USE IN SURRENDERS DIRECTLY TO PROSPECTIVE ADOPTIVE PARENTS BEFORE A UNITED STATES FOREIGN SERVICE OFFICER OR OFFICER OF THE UNITED STATES ARMED FORCES IN A FOREIGN COUNTRY.

0250-07-13-.08 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the three (3) ~~ten (10)~~ day period, the prospective adoptive parents will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.08 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.09 SURRENDER DOCUMENTS FOR USE IN SURRENDERS TO A LICENSED CHILD-PLACING AGENCY OR THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES IN THESE MATTERS, BY AN INMATE OF A STATE OR FEDERAL PENITENTIARY.

0250-07-13-.09 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the ~~ten (10)~~ three (3) day period, the Tennessee Department of Children's Services or Licensed Child-Placing Agency will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.09 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

0250-7-13-.10 SURRENDER DOCUMENTS FOR USE IN SURRENDERS DIRECTLYTO PROSPECTIVE ADOPTIVE PARENTS BY AN INMATE OF A STATE OR FEDERAL PENITENTIARY.

0250-07-13-.10 Paragraph (4) "Form" is amended by deleting question 16a, 16b, and 16c from Part I and replacing with

16 a. If you sign the surrender of the above-named child, do you understand that within ~~ten (10)~~ three (3) days from the date you sign the surrender, you may revoke or cancel this surrender by signing a paper called a REVOCATION OF SURRENDER before the judge who is here today, or his or her successor? Yes D No D

b. By signing the surrender of the above named child on this date, (Mo/Day/Yr)_____, the period of revocation of the surrender will begin on the day following the signing of the surrender, or (Mo/Day/Yr) _____. The revocation period is ~~ten (10)~~ three (3) ~~calendar~~ days and will expire on the ~~tenth (10th)~~ third (3rd) day or (Mo/Day/Yr)_____.~~If the tenth (10th) day falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday. If this is the situation in this case, that date will be (Mo/Day/Yr)~~Do you understand this? Yes D No D

c. Do you understand that if you do sign the Revocation of Surrender form within the three (3) ~~ten (10)~~ day period, the prospective adoptive parents will be required to return the child, if you currently have custody of the child, unless the court finds that to do so will likely result in immediate harm to the health and safety of the child, and that you may contest this decision not to return the child to you and you may have legal counsel to represent you in that proceeding? Yes D No D

0250-07-13-.10 paragraph (4), "Form", is amended by deleting the second note to court, or other person authorized to receive a revocation and to the clerk from Part IV and replacing with

2. The surrender must be revoked within ~~ten (10)~~ three (3) days ~~including Saturdays, Sundays and legal holidays~~ following the original execution of the surrender. T.C.A. § 36-1-112(a)(1). The revocation period will begin on the day following the signing of the surrender and will expire on the ~~tenth (10th)~~ third (3rd) day. ~~If the tenth (10th) falls on a Saturday, Sunday or legal holiday, the last day for revocation will be the next day which is not a Saturday, Sunday or legal holiday.~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

HARRY F. FLEMMINGS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires December 6, 2016

Date: 8-1-15

Signature: Bonnie Hommrich

Name of Officer: Bonnie Hommrich

Title of Officer: Commissioner

Subscribed and sworn to before me on: AUGUST 1, 2015

Notary Public Signature: Harry F. Flemmings

My commission expires on: DECEMBER 6, 2016

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

9/3/2015
Date

Department of State Use Only

Filed with the Department of State on: 09/11/15

Effective for: 180 *days

Effective through: 03/09/16

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

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2015 SEP 11 PM 12: 38
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
BOARD:	Air Pollution Control
SUBJECT:	Construction and Operating Permits
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-105; 40 C.F.R. Subpart I; 40 C.F.R. § 70.6(c)(5)(iii)(B)
EFFECTIVE DATES:	December 10, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The proposed rule:

• Authorizes the Air Pollution Control Board to issue general permits for broad categories of similar air contaminant sources that are subject to state or federal regulatory provisions but are not subject to federal Title V of the Clean Air Act permitting requirements. An eligible source would only have to demonstrate eligibility for coverage under a general permit issued for a particular source category rather than receiving an individual permit specifically tailored for an applicant's emission source. Availability of general permits for smaller sources should make permitting more efficient and allow resources to be focused on larger and more complex sources that have higher emissions and require a more individualized approach;
• Repeals PM2.5 significant monitoring concentration (SMC) provision because the federal regulation on which the provision is based has been vacated as beyond the E.P.A.'s authority by a final federal court decision; and
• Amends provisions relating to continuous or intermittent compliance in accordance with amendment of the corresponding federal regulation as a result of a final federal court decision holding that reporting whether data on which compliance is based is continuous or intermittent, instead of whether compliance itself is continuous or intermittent, is insufficient under the Clean Air Act.

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: Please clarify that the new rule (1200-03-09-.06) is intended to apply only to minor sources.

Response: Subparagraph 1200-03-09-.06(1)(a) states that this rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02. Title V and conditional major sources are subject to the provisions in paragraph (11) of Rule 1200-03-09-.02, leaving only true minor sources eligible for general permits. This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: 40 CFR 51.160 discusses enforceability principles for establishing general permit programs. Please clarify that the new general permits rule complies with 40 CFR 51.160.

Response: This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: Please note that the U.S. Environmental Protection Agency has not previously acted on approving Significant Impact Levels (SILs) into Tennessee's SIP; therefore, the EPA views this change as comporting to Tennessee's rule with the litigation related to the SILs and thus does not require any action on the EPA's part.

Response: The Board acknowledges this fact.

Comment: These revisions are consistent with the Title V requirements in 40 CFR Part 70. Please note that these revisions should be submitted to the EPA in the future as an update to the State's Title V program.

Response: The Board acknowledges this and will submit it as an update to our Title V program.

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.

Small businesses such as independent gas stations, dry cleaners, and auto body shops could potentially benefit from the issuance of general permits rather than individual permits. Small businesses will not be affected by the removal of the PM2.5 significant monitoring concentrations (SMC) or the change to the compliance certification requirements.

(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 will be no additional administrative costs.

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

Small businesses for coverage under general permits will be able to receive their permits more quickly.

(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 general permit process will be more efficient and less burdensome than the current individual permitting process.

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

The state of Florida authorizes the use of general permits for specified air contaminant sources and in Tennessee general permits are authorized for National Pollutant Discharge Elimination System permits (Tenn. Comp. R. and Reg. 0400-40-10).

The amendments that remove the PM2.5 SMC provision and amend the Title V certification requirements will make the state rules consistent with corresponding 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.

Exempting small businesses from the general permit rule would prevent small businesses from taking advantage of a more efficient and less burdensome permit process. Small businesses are not affected by the proposed PM2.5 and Title V certification rule amendments.

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 Board does not anticipate that the proposed and amended rules will have a financial impact on local governments.

20

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

For Department of State Use Only

Sequence Number: 09-19-15
Rule ID(s): 6025
File Date: 9/11/15
Effective Date: 12/10/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

X Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating Permits
1200-03-09-.06	General Permits

(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 1200-03-09
Construction and Operating Permits

Subparagraph (h) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subparagraph (h) and replacing it with a new subparagraph (h) so that, as amended, the new subparagraph shall read as follows:

(h) The Department shall on a monthly basis notify the public, by advertisement in a newspaper of general circulation in each air quality control region in which the proposed source or modification would be constructed, of the applicants seeking to obtain a permit to construct or modify an air contaminant source. ~~This~~ The notice shall specify the general vicinity or location of the proposed source or modification, the type of source or modification, and opportunity for public comment. Comments shall be in writing and delivered to the Technical Secretary within thirty (30) days after the publication of the public notice. The requirements of this subparagraph are considered to be met for notices of intent for general permits by monthly publication on the Department's website of a list of facilities requesting to be covered by a general permit.

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

Item (III) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current item (III) and replacing it with a new item (III) so that, as amended, the new item shall read as follows:

(III) Particulate matter:

10 $\mu g/m^3$ of TSP, 24-hour average
10 $\mu g/m^3$ of PM10, 24-hour average
~~4 $\mu g/m^3$ of $PM_{2.5}$, 24-hour average~~;

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

Subitem II of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem (II) and replacing it with a new subitem II so that, as amended, the new subitem shall read as follows:

II. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period~~, and whether such methods or other means provide continuous or intermittent data~~. Such methods and other means shall include, at a minimum, the methods and means required under subpart 1200-03-09-.02(11)(e)1(iii). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Act (see subitem V), which prohibits knowingly making a false certification or omitting material information;

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

Subitem III of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem III and replacing it with a new subitem III so that, as amended, the new subitem shall read as follows:

III. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in subitem 1200-03-09-.02(11)(e)3(v)(III)II. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance

any periods during which compliance is required and in which an excursion or exceedance as defined under subparagraph 1200-03-09-.02(11)(b) occurred; and

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

New Rule

Chapter 1200-03-09
Construction and Operating Permits

The Table of Contents for Chapter 1200-03-09 Construction and Operating Permits is amended by adding a new rule 1200-03-09-.06 with the title: General Permits.

A new rule is added to Chapter 1200-03-09 Construction and Operating Permits as Rule 1200-03-09-.06 General Permits to read as follows:

1200-03-09-.06 General Permits

(1) Applicability

(a) This rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02.

(b) Sources located in a nonattainment area are not eligible for a general permit for construction of a new or modified air contaminant source if the source emits the pollutant and/or a precursor to the pollutant for which the area has been designated nonattainment by the United States Environmental Protection Agency or the Tennessee Air Pollution Control Board.

(2) The Air Pollution Control Board may issue general permits for the purpose of covering numerous similar sources that are owned or operated by different persons at different facilities.

(3) Notwithstanding the provisions of the preceding rules of this chapter, a general permit may serve as both a construction permit and an operating permit.

(4) A general permit serving as a construction permit shall be subjected to public notice and an opportunity for public participation, as specified in subparagraph (1)(h) of Rule 1200-03-09-.01.

(5) The permit shall specify the eligibility criteria by which sources may qualify for the general permit and shall state both the process by which a source notifies the Technical Secretary that it requests to be authorized under the general permit and the means by which the Technical Secretary confirms that the source is either covered by the general permit or requires an individual permit. The source constructing and/or operating under the provisions of a general permit shall be subject to enforcement action for construction and/or operation without a permit required by this chapter if the source requested coverage under a general permit by representing itself to be eligible for a general permit in the source's notice of intent and it is later determined that the source does not qualify for the eligibility terms and conditions of the general permit.

(6) Sources subject to the provisions of this chapter that would qualify for a general permit shall submit a notice of intent to the Technical Secretary for coverage under the terms of the general permit. The Board may, in the general permit, provide for the requirements for the notice of intent which may deviate from the requirements of Rules 1200-03-09-.01 and 1200-03-09-.02, provided that they include all information necessary to determine qualifications for and to assure compliance with, the general permit.

(7) If either a source covered by a general permit or the Division determines that the source no longer qualifies for such permit, the source shall submit a Notice of Termination within thirty (30) days of such determination or notification by the Division.

(8) Duration of Permits. General Permits shall be issued for a fixed term, not to exceed 10 years, which shall be stated in the permit.

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 Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Thomas Beehan Working in Municipal Government				X	
John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Elaine Boyd Commissioner's Designee, Dept. of Environment and Conservation	X				
Karen Cisler Environmental Interests	X				
Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Helen Hennon Registered Professional Engineer				X	
Richard Holland Working for Industry with technical experience	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				
Alicia Wilson Working in management in Private Manufacturing	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/11/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: June 22, 2015

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: June 22, 2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: January 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

9/4/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/11/15

Effective on: 12/10/15

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2015 SEP 11 AM 11:13
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Office of General Counsel
SUBJECT:	Electronic Reporting
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 11-1-101 and 47-10-101 et seq.
EFFECTIVE DATES:	December 27, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rulemaking creates Chapter 0400-01-40 Electronic Reporting, and it will apply to persons who submit reports or documents to the Department of Environment and Conservation electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department. It also establishes the minimum requirements for the electronic document receiving system provided by the Department. These standards are designed to apply Department-wide and to support the Department's initiative to allow electronic submissions of information that is currently being received in written formats.

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: A commenter was concerned about the definition of electronic document including electronic documents that are conveyed to third-parties and the difficulty of third parties going through the Freedom of Information Act to obtain those documents.

Response: The term "electronic document" means any information in digital form that is conveyed to an agency or third-party and is identical to the federal definition found in 40 CFR 3.3. The Department believes it would be inappropriate to change the definition as suggested. The procedure a third party must use to obtain data is beyond the scope of this rulemaking.

Comment: A commenter requested that paragraph (1) of Rule 0400-01-40-.03 be clarified to make it clear that a person is not subject to penalties when the electronic document submission is in full compliance with the reporting requirements.

Response: The Department does not agree that the proposed language would assess a penalty when the electronic document submission is in full compliance with the reporting requirements. The intent of the regulation is to establish that the enforceability of documents submitted electronically is the same as the enforceability of written documents. However, paragraph (1) of Rule 0400-01-40-.03 has been changed to more adequately reflect this intent.

Comment: A commenter was concerned about electronically signed documents being as legally binding as handwritten signature when electronic signature can be hacked and suggested the that a provision be established in the regulations where the e-signatory is not responsible for information which has been submitted by hackers or other unauthorized persons.

Response; The language of Rule 0400-01-40-.03(2) is consistent with 40 CFR 3.4(c) and the modifications requested would not support our efforts to obtain program authorization for the individual regulatory programs. The person authorized to electronically sign electronic documents has an obligation to protect the electronic signature device and to promptly report any evidence that the device has been compromised. In an enforcement case the department will consider all the facts, including hacking.

Comment: A commenter was confused by paragraphs (1) and (2) of Rule 0400-10-40-.04 stating "when allowed by the Department" and "when required by the Department" because Chapter 0400-10-40 does not delimitate when electronic reporting is "allowed" or "required".

Response: This set of rules is foundational and does not on its own require or allow specific reports. These rules are intended to support the requirements of the individual programs. We anticipate that all of our major programs will be undergoing major revisions in the near future to require or allow specific electronic reporting. This Chapter of rule will be referenced by the other chapters to ensure consistency in how electronic data is captured and the exchange of data between programs and with the EPA.

Comment: A commenter read Rule 0400-01-40-.05 to require an electronic document to be able to generate data and requested a clarification.

Response: Rule 0400-01-04-.05 does not require the electronic document to be able to generate data but for the electronic document receiving system to be able to generate data. Rule 0400-01-40-.05 governs the system TDEC is to provide. This was necessary to support program authorization for the individual programs since EPA is requiring the system states develop to meet these requirements as a minimum.

Comment: A commenter recognized that Chapter 0400-01-40 does not mention password restricted access for the electronic submission server and stated that EPA's proposed NPDES Electronic Reporting Rule may require it and requested provisions be established to provide security to the electronic submission in addition to the signatory authority.

Response: This issued raised by the commenter is outside the scope of this rulemaking but is an example of the type of detail that will be included when the individual programs amend their rules to address specific submission requirements as appropriate for the type of document being submitted such as those that will be required by EPA when the NPDES electronic rule becomes final.

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

This proposed rulemaking creates Chapter 0400-01-40 Electronic Reporting and it will apply to persons who submit reports or documents to the Department of Environment and Conservation electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department. It also establishes the minimum requirements for the electronic document receiving system provided by the Department. These standards are designed to apply Department wide and to support the Department's initiative to allow electronic submissions of information that is currently being received in written formats.

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

Any business, including a small business, which is required to submit documents to the Department will benefit from these new rules. These new rules provide the foundation for allowing businesses to comply with many regulatory requirements electronically.

(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.

These rules provide the foundation for electronic submission of required documents but these rules do not directly require or allow electronic submissions. Requiring or allowing electronic submissions will result when the individual regulatory programs amend their current rules. There is a demand for the Department to support electronic submissions of documents because it is believed it will result in a reduction of the cost of doing business.

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

Small businesses will be required to comply with these rules when individual regulatory programs in the Department amend their rules to require or allow electronic submissions. It is believed that electronic submission of documents will result in a reduction of the cost of compliance.

(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.

We are not aware of any alternative methods to achieve the purpose and objectives of these new rules.

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

The EPA is preparing regulations to make electronic submission of documents mandatory and the Department must be prepared. These new rules are a necessary step toward that preparation. Surrounding states are also making progress in allowing electronic submission of documents. Tennessee must continue to develop this capability to remain competitive because it is believed that electronic submission of documents is a less costly and more efficient means of complying with regulatory requirements.

(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.

Exempting small businesses from the requirements of these new rules would serve to deny them of its cost saving benefits.

Impact on Local Governments

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

The Department anticipates that these new rules will not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 9-52-15
Rule ID(s): 6052
File Date: 9-28-15
Effective Date: 12-27-15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment and Conservation
Division:	Office of General Counsel
Contact Person:	Wayne Gregory
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-5420
Email:	Wayne.Gregory@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
0400-01-40	Electronic Reporting
Rule Number	**Rule Title**
0400-01-40-.01	Applicability
0400-01-40-.02	Definitions
0400-01-40-.03	Enforcement and Compliance
0400-01-40-.04	Electronic Reporting
0400-01-40-.05	Electronic Reporting System

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

New Rule

0400-01-40
Electronic Reporting

Table of Contents

0400-01-40-.01 Applicability
0400-01-40-.02 Definitions
0400-01-40-.03 Enforcement and Compliance
0400-01-40-.04 Electronic Reporting
0400-01-40-.05 Electronic Reporting System

0400-01-40-.01 Applicability

(1) Except as paragraph (2) of this rule provides otherwise, this chapter applies to persons who submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69.

(2) This chapter does not apply to:

(a) Documents submitted to the Department by facsimile or e-mail;

(b) Electronic documents submitted to the Department by magnetic or optical media such as diskette, compact disk, digital video disk, or tape;

(c) Documents and information submitted to the Department under grants issued by the Department, unless the conditions of the grant provide otherwise;

(d) Documents and information submitted to the Department under cooperative agreements entered into with the Department, unless the conditions of the agreement provides otherwise; or

(e) Data transfers between EPA and the Department.

(3) This chapter provides the framework for guiding the Department to implement electronic reporting and for guiding any person who submits reports or other documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68, and 69. It is intended that divisions of the Department that implement electronic reporting in their programs will develop such provisions through their own programs. The Department will receive, in electronic form, reports and other documents after each program prepares and becomes ready for electronic reporting.

0400-01-40-.02 Definitions

The definitions set forth in this rule apply when used in this chapter.

(1) "Acknowledgment" means a confirmation of electronic document receipt.

(2) "Commissioner" means the Commissioner of the Department of Environment and Conservation.

(3) "Copy of Record" means a true and correct copy of an electronic document received by an electronic document receiving system, which copy can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electric document with descriptions or labeling of the information. A "copy of record" includes:

(a) All electronic signatures contained in or logically associated with that document;

(b) The date and time of receipt; and

(c) Any other information used to record the meaning of the document or the circumstances of its receipt.

(4) "Department" means the Tennessee Department of Environment and Conservation.

(5) "Disinterested individual" means an individual who is not connected with the person in whose name the electronic signature device is issued. A "disinterested individual" is not any of the following:

(a) The person's employer or employer's corporate parent, subsidiary, or affiliate;

(b) The person's contracting agent;

(c) Member of the person's household; or

(d) Relative with whom the person has a personal relationship.

(6) "Electronic document" means any information in digital form that is conveyed to an agency or third-party, where "information" may include data, text, sounds, codes, computer programs, software, or databases. "Data" in this context, refers to a delimited set of data elements, each of which consists of a context or value together with an understanding of what the content or value means; where the electronic document includes data, this understanding of what the data element content or value means must be explicitly included in the electronic document itself or else be readily available to the electronic document recipient.

(7) "Electronic document receiving system" means any set of apparatus, procedures, software, records, or documentation used to receive electronic documents.

(8) "Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. The electronic document bears or has on it an electronic signature where it includes or has logically associated with it such information.

(9) "Electronic signature agreement" means an agreement signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signatures requiring such individual to protect the electronic signature device from compromise; to promptly report to the agency or agencies relying on the electronic signatures created any evidence discovered that the device has been compromised; and to be held as legally bound, obligated, or responsible by the electronic signatures created as by a handwritten signature.

(10) "Electronic signature device" means a code or other mechanism that is used to create electronic signatures. Where the "device" is used to create an individual's electronic signature, then the code or mechanism must be unique to that individual at the time the signature is created and he or she must be uniquely entitled to use it. The "device" is compromised if the code or mechanism is available for use by any other person.

(11) "EPA" means the United States Environmental Protection Agency.

(12) "Handwritten signature" mean the scripted name or legal mark of an individual, handwritten by that individual with a marking or writing instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form, where "a writing" means any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form. The physical instance of the scripted name or mark so created constitutes the handwritten signature. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other media.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, including another agency.

(14) "Subscriber agreement" means an electronic signature agreement signed by an individual with a handwritten signature. This agreement must be stored until five (5) years after the associated electronic signature device has been deactivated.

(15) "Transmit" means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system.

(16) "Valid electronic signature" means an electronic signature on an electronic document that has been created with an electronic device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status or his or her relationship to the entity on whose behalf the signature is executed.

0400-01-40-.03 Enforcement and Compliance

(1) A person is subject to any applicable state civil, criminal, or other penalties and remedies for failure to submit reports or other documents or otherwise comply with a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68, and 69 if the person fails to comply with the applicable provisions for electronic reporting.

(2) When an electronic document is submitted to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, the electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document submitted to satisfy the same reporting requirement.

(3) Proof that a particular signature device was used to create an electronic signature will suffice to establish that the individual uniquely entitled to use the device did so with the intent to sign the electronic document and give it effect.

(4) Nothing in this chapter limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

0400-01-40-.04 Electronic Reporting

(1) When allowed by the Department, a person may submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, provided that person complies with the requirements of paragraph (3) of this rule.

(2) When required by the Department, a person must submit reports or other documents to the Department electronically to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 in compliance with the requirements of paragraph (3) of this rule.

(3) (a) The person that transmits the electronic document to the Department's applicable electronic document receiving system must comply with the system's requirements for submission; and

(b) The electronic document must bear all valid electronic signatures that are required by paragraph (4) of this rule.

(4) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 to sign the paper document for which the electronic document substitutes, unless the Department includes specific provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature. The paper submission must contain references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or

agree to the content of that electronic document.

0400-01-40-.05 Electronic Reporting System

The Department's electronic document receiving system that receives electronic documents submitted in lieu of paper documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69 must be able to generate data with respect to any such electronic document, as needed and in a timely manner, including a copy of record for the electronic document, sufficient to prove, in private litigation, civil enforcement proceedings, and criminal proceedings, that:

(1) The electronic document was not altered without detection during transmission or at any time after receipt;

(2) Any alterations to the electronic document during transmission or after receipt are fully documented;

(3) The electronic document was submitted knowingly and not by accident;

(4) Any individual identified in the electronic document submission as a submitter or signatory had the opportunity to review the copy of record in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information and had the opportunity to repudiate the electronic document based on this review; and

(5) In the case of an electronic document that must bear electronic signatures of individuals as provided by paragraph (4) of Rule 0400-01-40-.04, that:

(a) Each electronic signature was a valid electronic signature at the time of signing;

(b) The electronic document cannot be altered without detection at any time after being signed;

(c) Each signatory had the opportunity to review in a human-readable format the content of the electronic document that he or she was certifying to, attesting to or agreeing to by signing;

(d) Each signatory had the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties;

(e) Each signatory had signed either an electronic signature agreement or a subscriber agreement with respect to the electronic signature device used to create his or her electronic signature on the electronic document;

(f) The electronic document receiving system had automatically responded to the receipt of the electronic document with an acknowledgement that identifies the electronic document received, including the signatory and the date and time of receipt, and was sent to at least one address that does not share the same access controls as the account used to make the electronic submission; and

(g) For each electronic signature device used to create an electronic signature on the document, the identity of the individual uniquely entitled to use the device and his or her relation to any entity for which he or she will sign electronic documents had been determined with legal certainty by the Department. In the case of electronic documents submitted in lieu of paper documents to satisfy a statutory obligation or a regulatory requirement administered by the Department under the applicable portions of Tennessee Code Annotated, Titles 11, 59, 60, 68 and 69, this determination had been made before the electronic document was received, by means of:

1. Identifiers or attributes that are verified (and that may be re-verified at any time) by attestation of disinterested individuals to be uniquely true of (or attributable to) the individual in whose name the application is submitted, based on information or objects of independent origin, at least one item of which is not subject to change with governmental action or authorization;

2. A method of determining identity no less stringent than would be permitted by part 1 of this subparagraph; or

3. Collection of either a subscriber agreement or a certification from the Department that such an agreement has been received and securely stored.

Authority: T.C.A. §§ 11-1-101, 47-10-101 et seq., and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 9-4-15, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/12/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/06/15

KIMBERLY BERNAL RIDING
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires November 5, 2018

Date: 9/4/15

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9-4-15

Notary Public Signature: Kimberly Bernal Riding

My commission expires on: 11-5-18

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

9/24/2015
Date

Department of State Use Only

Filed with the Department of State on: 9-28-15

Effective on: 12-27-15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 28 PM 1:20
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Consumer and Industry Services
SUBJECT:	Farm Bulk Milk Tank Trucks/Method of Determining Butterfat/Uniform Code System for Identification of Plants
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 53-3-104(a)(1)(B)
EFFECTIVE DATES:	December 17, 2015, through June 30, 2016
FISCAL IMPACT:	Minimal. The Agency reports that no fees are associated with this rule, and the only financial impact of the rule is that which would result from civil penalties issued in enforcement of the regulation.
STAFF RULE ABSTRACT:	This rule will allow for three day pickup of milk for Grade "A" purposes. Under the previous rule, milk for Grade "A" purposes was required to be picked up every two days. The rule adopts NIST Handbook 44 for standards of measurements in farm bulk milk tanks. Adoption of NIST Handbook 44 replaces previous requirements and is consistent with the standard practice employed by the Federal Milk Market Administrator.

Public Hearing Comments

The Department of Agriculture held a public hearing on June 26, 2015. Jason Miller served as hearing officer for the Rulemaking Hearing concerning 0080-03-04 Regulation Governing: Farm Bulk Milk Tank Trucks, Method of Determining Butterfat and Uniform Code System for Identification of Plants. No oral comments were presented at the hearing. Written comments from constituents are summarized below along with the Department's response.

Comment:

Ms. Beth Farrow inquired whether the rule previously required the number 41 to appear as the uniform code system number for Tennessee. Ms. Farrow also inquired whether, under the rule Grade "A" non-fluid manufacturing would be classified under the uniform code number 47-100 series or 47-300 series.

Response:

Under the previous rule, the uniform code system number for Tennessee was 41, which was at odds with the labeling system required by the National Conference on Interstate Milk Shippers. The Department has amended the rule to resolve this conflict in code system number requirements. Regarding the 100 and 300 series numbering requirements, under the rule 300 series labeling is intended for non-Grade "A" manufacturers, e.g. cheese and butter producers. For this reason, Ms. Farrow's comments are well-taken, and the rule has been amended to designate the 100 series label as including fluid or Grade "A" plant operations.

Comment:

Mr. John Sanford submitted that inclusion of independent marketing agencies is appropriate for the Department's definition of "handler." Mr. Sanford also urged incorporation of requirements from the Pasteurized Milk Ordinance regarding the allowance of partial milk pick-ups from dairy farms. Specifically, Mr. Sanford requests that the rule's provision under 0080-03-04-.01(3)(i) allow for partial pickup where the bulk milk tank is equipped with a recorder and the tank is "cleaned and sanitized when empty and shall be emptied at least every seventy-two (72) hours." Mr. Sanford also inquired whether uniform code system numbering for dairy and trade product plants is made upon recommendation of the National Labeling Committee.

Response:

Mr. Sanford's comments are well-taken. Independent milk marketing agencies have been included in the rule's definition of handler. The suggested language from the Pasteurized Milk Ordinance has been included under 0080-03-04-.01(3)(i). Reference to the National Labeling Committee under 0080-03-04-.03 has been deleted and substituted with reference to the National Conference on Interstate Milk Shippers.

Comment:

Mr. John Sanford, Mr. Jim Byington, and Mr. Bob Shipley, collectively, submitted that reference to cooperative associations of milk producers under the definition of "handler" should not include provision that the associations are chartered under state law.

Response:

Currently, cooperative associations of milk producers are not required to be chartered under state law. Consequently, the gentlemen's comment is well-taken and reference to associations being chartered under state law has been removed from the definition of "handler."

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

(1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

It is not anticipated that this rule will produce a cost to small businesses. It is expected that milk haulers, cooperatives, and small dairy farms may benefit from this rule.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 20 milk hauling firms, eight milk marketing agencies, and 340 dairy farms are registered with the Department.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

(4) Statement of the probable effect on impacted small businesses and consumers:

This rule is intended to allow for greater efficiency in milk haulers' business by saving required trips, time, and fuel.

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

No less burdensome methods for achieving this purpose are possible.

(6) Comparison of the proposed rule with any federal or state counterparts:

This rule allows for three day pickup of Grade "A" milk as opposed to two day pickup that is currently required under state regulation. It also serves to clarify current accepted practices for bulk milk tank measurement by adoption of NIST Handbook 44. Most surrounding states allow for three day pickup of milk. NIST Handbook 44 is a standard practice employed by the Federal Milk Market Administrator. The Pasteurized Milk Ordinance, revised by the U.S. Department of Health and Human Services, Public Health Service, and the Food and Drug Administration, does not specifically address frequency of pickup or tank measurement.

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

Exemption of small businesses from the requirements of this rule may compromise food safety requirements.

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)

9

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

For Department of State Use Only

Sequence Number: 09-32-15
Rule ID(s): 6044
File Date: 09/18/15
Effective Date: 12/17/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Agriculture
Division:	Division of Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@tn.gov

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0080-03-04	Regulation Governing: Farm Bulk Milk Tank Trucks, Method of Determining Butterfat and Uniform Code System for Identification of Plants
Rule Number	**Rule Title**
0080-03-04-.01	Farm Bulk Milk Tank and Bulk Milk Tank Trucks
0080-03-04-.03	Uniform Code System for the Identification of Dairy and/or for Trade Product Plants

Chapter 0080-03-04
Regulation Governing: Farm Bulk Milk Tank Trucks, Method of Determining Butterfat and Uniform Code System for Identification of Plants

Amendments

Rule 0080-03-04-.01 Farm Bulk Milk Tank and Bulk Milk Tank Trucks is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Definition of Terms and Clarification of Responsibility

(a) Handler: For the purpose of this regulation, handler means a cooperative association of milk

~~licensed milk dealer who receives milk from farm milk tanks shall be defined as a handler~~any person subject to licensure by the department as a Frozen Dessert Manufacturer, Dairy Plant, Trade Products Plant, or Receiving Plant.

(b) ~~*Hauler*~~Hauler: For the purpose of this regulation, hauler means the operator of a tank truck who receives milk from farm milk tanks for delivery to a handler ~~shall be defined as a hauler~~.

~~1. Butterfat content of bulk milk; and~~

~~2. For the health of persons handling milk; and~~

~~3. For the construction and maintenance of equipment which the handler owns or controls for bulk milk handling; and~~

~~4. Frequency of pickup.~~

(d~~c~~) ~~*Hauler Responsibility*~~Hauler Responsibility: ~~The haulers~~A hauler shall be responsible as a carrier, and shall be responsible for determining the marketable quality of the milk, for accurately measuring and converting to weight the quantity of milk, for recording legibly the hauler's name, license number, milk weight and date of pickup on farm pickup records, for taking samples to determine the butterfat content, grade, and quality of milk received from farm milk tanks, for maintaining sanitary handling equipment, and for frequency of pickup.

(2) ~~LICENSE AND QUALIFICATIONS~~License and Qualifications

(a) ~~*Hauler*~~Hauler: Every person who operates a milk transport tank truck for delivery of milk from farm milk tanks to a handler shall be a licensed milk tester and/or sampler and weigher.

(b) ~~*Handler*~~Handler: Every handler receiving milk from a transport tank truck shall be ~~a licensed milk dealer~~licensed pursuant to the Dairy Law of the State of Tennessee, T.C.A. §53-3-101, et seq.

(3) ~~SANITATION AND STANDARDS~~Sanitation and Standards

(a) ~~*Milk House and Installation of Tank:*~~Milk House and Installation of Tank

1. Construction shall meet the ~~requirements of the Tennessee Dairy Laws and the minimum requirements of the latest United States Public Health Service Code~~standards of the most recent edition of the Pasteurized Milk Ordinance, revised by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

2. Installed milkroom equipment should be readily accessible to the operator. Aisles should be at least 30 inches wide, with added allowance at the outlets of bulk cooling/holding tanks, adjacent to wash and rinse vats and where operational conditions warrant. ~~It is especially important that t~~The space available to bulk cooling/holding tanks and CIP systems should be adequate to permit their disassembly, inspection and servicing.

3. Farm tanks shall not be located over floor drains except by permission of the ~~C~~commissioner of ~~A~~agriculture or his agent.

4. The door of the milk house ~~is~~shall not ~~to~~ be used for entrance of hose from the tank truck. There shall be provided a small, self-closing port not to exceed 8 inches in diameter for the hose entrance. This opening shall be at least 6 inches above the floor inside milk house or 6 inches above ground level whichever is the higher. This opening ~~is to~~shall be conveniently located in the milk house.

5. The agitator switch ~~is to~~shall be conveniently located in the milk house. Automatic agitators ~~are to~~shall be provided with manual control.

6. The covers of the farm tank ~~are to~~shall remain closed except during the sampling, measuring, emptying, washing and sanitizing operations.

7. An apron of concrete construction with a minimum area of 32 square feet so located as to help protect milk-conducting facilities from filth and soil shall be provided. It shall be adjacent to the outside wall of the milk house in which the hose port is located. It is recommended that a firm driveway be provided adjacent to apron.

8. All farm tanks shall be installed high enough above the milk house floor so as to permit easy cleaning of floor underneath, minimum of 6 inches, and to comply with approved standards.

9. A safe electric outlet shall be provided close to the hose port for the purpose of connecting the pump on the tank transport.

10. All farm bulk tanks shall be set on a foundation sufficiently firm to withstand extended freezing and thawing and so anchored that after leveling they will remain level.

(b) ~~*Construction of Farm Tanks*~~Construction of Farm Tanks

1. ~~It is required that the c~~Construction of farm milk tanks shall meet~~s~~ the 3-A National Standard for holding and/or cooling tanks.

2. Tanks shall be equipped with adjustable legs and provided with adequate means so that movable parts can be sealed.

3. The minimum diameter of the outlet opening shall be 1 1/2 inches. Valves are to be sanitary in construction, readily cleanable and ~~are to~~shall comply with the 3-A National Standard for fittings. A sanitary cap ~~is to~~shall be provided to cover the outlet when not in actual use.

4. Tanks ~~are to~~shall be equipped with a motor driven agitator so designed and powered as to provide adequate agitation of the milk without churning or excessive splash. Adequate agitation means that degree of agitation which within 5 minutes (or within tank manufacturer's specifications) restores uniformity to the fat content throughout the capacity volume. The agitator shaft and blades ~~are to~~shall be easily and readily demountable for cleaning.

5. Milk in farm tanks ~~must~~shall be cooled to ~~and maintained at 40 degrees F. or lower~~10°C (50°F) or less within four hours of the commencement of the first milking, and to 7°C (45°F) or less within two hours after the completion of milking. ~~The cooling process shall be such that the milk will be cooled to 50 degrees F. within one hour and to 40 degrees F. within the second hour. After the first milking and at no time thereafter shall the temperature of the milk exceed 50 degrees F.~~In no event shall the blend temperature of milk from the first milking and milk from subsequent milkings exceed 10°C (50°F).

(c) ~~*Sampling and Testing*~~Sampling and Testing

1. Examination of the milk shall be made on each producer's milk at the time of pick up. Any milk which appears to be abnormal by sight and/or odor shall be rejected at ~~this location~~the place of pick up.

2. Farm bulk milk shall be representatively sampled for quality in accordance with the ~~requirements of the Tennessee Dairy Laws and Regulations and United States Public Health Code~~standards of the most recent edition of the Pasteurized Milk Ordinance, revised by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

3. Temperature of milk in the farm tank shall be recorded at time of pick up.

4. Sampling of milk for an individual sample or for a sample for the making of butterfat tests shall be by the taking of a representative sample of milk after adequate agitation (minimum 5 minutes or longer as may be required by tank manufacturer's specifications) from each farmer's milk tank.

5. All samples for quality and butterfat are to be properly refrigerated at all times (~~A~~above freezing but below 40 ~~degrees~~°F.)

(d) ~~*Cleaning and Sanitizing Farm Milk Tanks*~~Emptying, Cleaning and Sanitizing Farm Milk Tanks

1. ~~The farmer's milk tank shall be thoroughly rinsed with luke-warm or cold water by the tank transport operator as soon as all the milk has been drawn out~~Farm bulk milk tanks shall be emptied, cleaned, and sanitized at least once every 72 hours.

2. ~~As soon as is practical after the farm tank is emptied it is to be brush washed or cleaned by an approved mechanical method (metal sponges and metal buckets not recommended) with warm water and detergent, followed by a thorough acidity rinse and allowed to drain.~~Cleaning.

   (i) As soon as a farm bulk milk tank is emptied, the hauler who emptied the tank shall thoroughly rinse the tank with luke-warm or cold water. A water hose of sufficient length shall be provided in the milk house for the rinsing of farm tanks. The hose shall be equipped with necessary fittings, and a hanger to be provided in the milk house for storage of said hose.

   (ii) As soon as is practical after the tank is emptied and rinsed, the owner or operator of the tank shall brush wash the tank with warm water and detergent or clean it by an approved mechanical method (metal sponges and metal buckets are not recommended); shall rinse the tank thoroughly with an acidity rinse; and shall allow the tank to drain.

   (iii) Agitator shafts, down pipes, measuring rods and similar equipment shall be protected from contamination until used again.

3. ~~Agitator shafts, down pipes, measuring rods and similar equipment shall be protected from contamination until used again.~~Sanitizing: the owner or operator of the tank shall sanitize all milk contact surfaces with an approved solution of proper concentration just prior to use.

4. ~~All milk contact surfaces shall be sanitized with an approved solution of proper concentration just prior to use.~~

5. ~~A water hose of sufficient length is to be provided in the milk house for the rinsing of farm tanks. The hose is to be equipped with necessary fittings, and a hanger to be provided in the milk house for storage of said hose.~~

(e) ~~*Transport Tanks*~~Transport Tanks

1. All tanks used to transport milk from farm to plant shall be constructed and maintained in accordance with the latest 3-A National Standards.

2. The transport tank shall be covered by the permit required by the appropriate health authority.

(f) ~~*Milk Conducting Facilities*~~Milk Conducting Facilities

Milk may be conducted from the farm bulk tank to the transport tank by approved hose

or sanitary pipe. The fittings that attach the hose or pipe to the farm milk tank shall be protected with a sanitary cap to afford protection from contamination when not in use.

(g) ~~*Unloading of Milk at Plant*~~Unloading of Milk at Plant

The unloading of milk from the transport tank shall be done in a place and a manner so as to prevent contamination during such operation.

(h) ~~*Cleaning and Sanitizing Transport Tanks*~~Cleaning and Sanitizing Transport Tanks

1. Transport tanks shall be cleaned and sanitized after each delivery unless the deliveries are to plants within the same market, in which case three loads in a twelve-hour period may be hauled between complete cleanups, provided that no more than a two-hour interval is permitted between loads or pickups without cleaning and sanitizing the pump and hose. The hauler must clean and sanitize the pump and hose. The handler must clean and sanitize the transport tank.

2. A tag designating date, time, place and name of tank clean-up personnel shall be attached to each transport unit at the completion of each tank cleaning and sanitizing operation.

3. Each handler shall provide facilities for adequate washing and bacteriacidal treatment of tanks, piping and accessories.

(i) ~~*Frequency of Pickup.*~~Frequency of Pickup

1. ~~(i)~~ Bulk tank raw milk for Grade A or manufacturing purposes must be picked up
from the farm ~~and delivered to the milk plant~~at least every ~~two (2)~~three (3) days.

   ~~(ii) Bulk tank raw milk for manufacturing purposes must be picked up from the farm and delivered to the milk plant at least every three (3) days.~~

2. At the time of collection, the bulk milk hauler shall collect only that raw milk which has been stored continuously in the farm tank from the time of milking until the time of milk collection. The hauler shall collect the entire volume of acceptable milk being stored in the tank at the time of collection. A hauler may collect only part of the entire volume of acceptable milk being stored at the time of collection if:

   (i) Before any additional milk is added to the tank storage, the remaining milk is picked up or emptied, and the tank is cleaned and sanitized in accordance with this rule; or

   (ii) The tank is:

      (I) Equipped with a 7-day recording device that complies with the most recent version of Appendix H of the Grade "A" Pasteurized Milk Ordinance, revised by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and

      (II) Cleaned and sanitized when empty, and is emptied at least once every 72 hours.

(4) ~~D. STANDARDS FOR MEASUREMENTS IN FARM MILK TANKS~~Standards for Measurements in Farm Milk Tanks

~~(a) *General:*~~

~~1. A stationary tank, whether or not equipped for cooling its contents.~~

2. Means for reading the level of liquid on the tank, such as a removable gage rod or surface gage.

3. A chart for converting level-of-liquid reading to gallons.

4. Chart readings may also be shown in avoirdupois weight in conjunction with gallon readings on the basis of 8.6.

(b) *Center Reading Tank:* One so designed that the gage rod or surface gage, when properly positioned for use, will be approximately in the vertical axis of the tank, centrally positioned with respect to the tank walls.

(c) *Gage Rod:* A graduated, "dip stick" type of measuring rod designed to be partially immersed in the liquid and to be read at the point where the liquid crosses the rod.

(5) SPECIFICATIONS

(a) *Identification:* Farm milk tanks shall be conspicuously, clearly and permanently marked, for purpose of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation that positively identifies the pattern or design of the tank. A tank and any gage rod or surface gage and gallonage chart associated therewith shall be mutually identified, as by a common serial number, in a prominent and permanent manner.

(b) *Design:*

1. Level: A farm milk tank shall be in normal operating position when it is level. The tank shall be equipped with suitable special means by which this level can be determined and established, such as a permanently attached two-way level, or other approved and accurate means or reference for level determinations.

2. Permanence: Farm milk tanks shall be of such design, construction and material that it will withstand ordinary usage without impairment of the accuracy of measurements made therein. The shell, bulkheads and supporting framework shall be of such design, material and construction that they will not become distorted, under any condition of liquid lading. The tanks shall be rigidly installed in level on the floor of the milk house without use of removable blocks or shims under the legs.

3. Discharge outlet or valve: A farm milk tank shall be equipped with a discharge outlet or valve through which the tank may be completely emptied when the tank is in level.

4. Complete Drainage: A farm milk tank shall be so designed and constructed and shall be so installed that the tank may be completely emptied through the discharge outlet or valve when the tank is level.

5. Calibration: Upon installation and/or re-installation at any farm, the tank shall have been calibrated, at the factory of the manufacturer, to "deliver" the indicated capacities, within the tolerances allowable.

6. Capacity: The capacity of a farm milk tank shall be determined as the highest liquid level reading obtainable where agitation of liquid will not overflow the tank.

7. Testing Medium: Water shall be used as the medium in determining the capacity of farm milk tanks.

8. Responsibility of Installation: It shall be the responsibility of the manufacturer or his agent, distributor, or the producer to install the farm milk tank as per specifications and regulations stipulated in this regulation, and to notify the Director of Weights and Measures Division, Tennessee Department of Agriculture.

9. Responsibility: It shall be the responsibility of the farm milk tank manufacturer to

~~calibrate farm milk holding tanks. Said calibration shall be made at the factory of the manufacturer. Said calibration shall be in not more than 5-gallon intervals, complete from zero to the point of highest liquid level not to overflow the tank. All equipment used for tank calibration within the State of Tennessee must be approved by the Director of Weights and Measures Division, Tennessee Department of Agriculture.~~

~~10. Gage Rod Bracket or Support: If a tank is designed for use with a gage rod, a substantial and rigid gage rod bracket or other suitable supporting elements for positioning the gage rod shall be so constructed that whenever the rod is placed in engagement with the bracket or supports, and released, the rod will automatically seat itself at a fixed height and in a vertical position. When a gage rod is properly seated on its bracket or supports, there shall be a clearance of at least 3 inches between the graduated face of the rod and any tank wall or other surface that it faces. The arrangements shall be such that it will be impossible to reverse the reading position. That the part of the gage rod bracket which is designed to hold the gage rod and which comes in contact with the gage rod shall be sufficiently hardened, that under continual usage or careless handling, it will not become so worn that it will allow the gage rod to hang to an improper depth in the tank thereby causing an error in the measure of the milk in the tank.~~

~~(c) *Indicating Means*:~~

~~1. Gage Rod: When properly seated in position, a rod shall not touch the bottom of the tank unless this is required by the design of the supporting elements. The rod shall be graduated throughout an interval corresponding to the gallonage range within which readings of the liquid level are to be made. Farm holding tanks shall be so constructed that nothing shall prevent vertical insertion of the gage rod. That part of the gage rod designed to hold the gage rod in the gage rod bracket and which comes in contact with the gage and bracket, shall be sufficiently hardened that under continual usage or careless handling will not become so worn that it will permit the gage rod to hang to an improper depth in the tank, thereby causing an error in the measuring of the milk in the tank. The graduated face of the rod shall have a dull finish.~~

~~2. Spacing Width and Identification of Graduations: On a gage rod or surface gage, the spacing of the graduations, center to center, shall be not more than 0.0625 (1/16) inch and not less than 0.03125 (1/32) inch; the graduations shall not be less than 0.005 inch in width, and the clear interval between adjacent edges of successive *graduations shall be not less than 0.015625 (1/64) inch*.~~

~~3. Graduation Identification: The graduation scale shall be in terms of inches and fractions of an inch. Main graduation marks or lines including each 1/16 inch shall be successively longer than the minimum 1/32 inch graduation, and shall be numerically marked adjacent to the end not less than each 1/4 inch and shall start at the bottom and shall be in regular sequence.~~

~~4. Graduation: Gage rod graduations and numerals identifying same shall be milled, etched or otherwise indented but indentions shall not be so deep as to cause a capillary effect preventing straight line reading across entire face of the gage rod. Surface gage graduations shall be of such material that they will not become obliterated. Graduations shall be paralleled and at 90 (degree) angle to the perpendicular axis of the gage rod or surface gage.~~

~~5. Dimensions and Material: A gage rod shall be made of stainless steel or of other suitable approved material and design. When seated on or in its bracket the rod shall not touch the bottom of the farm milk tank. A gage rod shall be rectangular in shape and shall not be less than 1/4 inch in thickness and not less than 3/4 inch in width.~~

~~6. Values of Graduations: On a gage rod or surface gage, the graduations may be designed in inches and fractions thereof, or may be identified in a numerical series~~

~~without reference to inches or fractions thereof. In either of these cases there shall be provided for each such rod or gage and each tank with which it is associated, a gallonage chart showing values in terms of gallons of liquid in the tank, corresponding to each graduation on the rod or gage. If a rod or gage is associated with but one tank, in lieu of linear or numerical series graduations and gallonage chart, values in terms of gallons of liquid in the tank may be shown directly on the rod or gage.~~

~~7. Sensitiveness: The value of graduated interval (exclusive of the interval from the bottom of the tank to the lowest graduation) shall not exceed one gallon for a tank of a nominal capacity of 500 gallons or less, and shall not exceed 2 gallons for a tank of a nominal capacity of more than 500 gallons.~~

~~(d) *Chart:* A gallonage chart shall be supplied with each farm milk tank and shall show values at least to the nearest pound for a farm milk tank of all capacities. All letters and figures on a chart shall be distinct and easily readable.~~

~~1. Opposite each increment shall be shown the value of that individual increment in terms of U.S. avoirdupois weight.~~

~~2. The chart shall bear the name and address of the manufacturer of the tank; the model and serial number of the farm milk tank for which it is intended; the date of the calibration, and the name of the person making calibration.~~

~~3. Three copies of each chart shall be furnished. One copy to be kept by the dairy; one copy to be kept by the manufacturer, one copy shall be mailed to the Director of Weights and Measures, Tennessee Department of Agriculture, Nashville, Tennessee.~~

~~4. The dairyman's chart shall be sealed between transparent sheets of waterproof material, and shall be hung or otherwise placed in conspicuous place in the dairyman's milk house in which the farm milk tank is located.~~

~~5. All printing and/or typing shall be clear and distinct and all calibration figures shall be placed exactly in line with the increments they are intended to represent.~~

~~(e) *Installations:*~~

~~1. Farm Milk Tanks and Farm Milk Installations shall in every instance meet the State of Tennessee specifications and tolerances, rules and regulations and those adopted by the 3-A Standards Committee.~~

~~2. Farm Milk Tanks with Adjustable Legs: Adjustable legs shall be flat across the bottom and shall have permanently attached thereto a metal plate 4 inches square at least 1/4 inch in thickness, or in lieu thereof, a metal flange of comparable dimensions permanently affixed to the bottom of the legs.~~

~~3. Milk House Floor: If the concrete floor of the dairyman's milk house is less than 4 inches thick or is in poor condition, a concrete pier shall be provided for each leg of the farm milk tank.~~

~~4. Concrete Piers: Concrete piers shall not be less than 6 inches by 6 inches across the top and shall taper to not less than 12 inches by 12 inches across the bottom and shall not be less than 18 inches in depth. The top of each pier shall extend only to a point approximately 2 inches below the surface of the milk house floor. In locations where the weather is very cold, all piers must go below the "frost line" for their foundations.~~

~~5. All farm milk tanks shall be filled to capacity during leveling operations and shall be completely filled prior to the calibration thereof, for the purpose of setting the tank to a permanent position.~~

~~6. Tanks Without Legs: Farm milk tanks without legs shall be installed on a concrete island which shall extend at least 6 inches above the surface of the concrete floor of the milk house. The length and width of said concrete island shall be one inch less than the outside length and width of the farm milk tank and the surface shall be level throughout. Lugs shall be provided for permanently anchoring farm milk tanks to the concrete island on which they are installed. In using lugs, holes of the proper size and lead and inserts must be used to make the installations firm and rigid.~~

~~(6) TOLERANCES:~~

~~(a) Application: The tolerances hereinafter prescribed shall be applied equally to errors in excess and errors in deficiency.~~

~~(b) Minimum Tolerance Values: On a particular tank, the maintenance and acceptance tolerances applied shall not be smaller than the smallest volume corresponding to a graduated interval at any point on the gage rod or surface gage.~~

~~(c) Basic Tolerance Values: Basic maintenance and acceptance tolerances shall be as shown in table 1. (The error at any liquid level of a farm milk tank is the difference between the gallonage shown for that level on the gallonage chart and the corresponding gallonage determined by test. The tolerance is applied according to the volume of test liquid in the tank at each test draft, regardless of the nominal capacity of the tank.)~~

~~TABLE 1. -BASIC MAINTENANCE AND ACCEPTANCE TOLERANCES FOR FARM MILK TANKS~~

~~Nominal capacity of tank~~	~~Tolerance in excess and in deficiency~~

~~GALLONS~~	~~GALLONS~~
~~250 or less~~	~~1/2~~
~~251 to 500, incl.~~	~~1~~
~~501 to 1,500, incl.~~	~~3~~
~~1,501 to 2,500, incl.~~	~~4~~
~~2,501 to 5,000, incl.~~	~~6~~
~~Over 5,000~~	~~Add 2 gallons per 2,500 gallons or fraction thereof.~~

~~(7) REGULATIONS~~

~~(a) *Level Condition:* A farm milk tank shall be maintained in level.~~

~~(b) *Inspection:* The Department of Agriculture may make inspections of farm milk tanks, installations, and calibrations, as deemed necessary, for the purpose of enforcing these rules and regulations. In case of disputes, and upon request by either buyer or seller or both for inspection, the Department of Agriculture may make a reasonable charge to cover cost of making said inspection.~~

~~Any part of this section in conflict with the regulations pertaining to the production, storage, and transportation of raw milk for manufacturing purposes shall not apply to milk which is to be used for manufacturing purposes.~~The department adopts by reference, as if fully stated herein, the standards and requirements of the most current version of the National Institute of Standards and Technology Handbook 44, and supplements thereto, as it pertains to farm bulk milk tank specifications.

Authority: T.C.A. §§ 4-3-203; 53-3-104.

Rule 0080-03-04-.03 Uniform Code System for the Identification of Dairy and/or for Trade Products Plants is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

In accordance with the recommendations of the National ~~Labeling Committee~~Conference on Interstate Milk Shippers, code numbers which shall appear on all consumer packages ~~will~~shall be assigned to dairy and/or trade products plants as follows:

(a) The plant numbers will employ five (5) digits of which the first two and the last three are separated by a dash (-). (Example 00-000). The first two digits will be the number ~~41~~47 which is the number assigned to the State of Tennessee. This will be followed by a dash (-). (Example ~~41~~47-000).

(b) The third digit preceded by the dash (-) will indicate the type of operation for which the number is issued.

1. Number one (1) will indicate a fluid milk or Grade "A" plant operation. (Example ~~41~~47-100).

2. Number two (2) will indicate a frozen dessert manufacturing plant (no number will be issued a retail soft service establishment). (Example ~~41~~47-200).

3. Number three (3) will indicate a manufacturing plant operation. (Example ~~41~~47-300).

(c) The fourth and fifth digits will be used to identify the individual plants.

In the event a product is processed by one company and distributed by another company, the

name and address of the distributor and/or processor shall be on the ~~display~~information panel. The processing company is not required to put their name and address on the carton if the number assigned them by the ~~C~~commissioner and the name and address of the distributor is on the carton~~; provided, however, that the product must be registered in a name that appears on the carton~~. In the event a processing plant operates more than one plant they may use the address of the general office provided that the code number of the plant where processed is legible on the carton.

~~All other regulations previously issued by the Commissioner of Agriculture for the enforcement of Sections 52-301 – 52-319, Tennessee Code Annotated, and promulgated in accordance with Section 52-304, Tennessee Code Annotated, in conflict herewith are by these regulations repealed.~~

~~Executed this 19th day of November, 1970, Nashville, Tennessee.~~

Authority: T.C.A. §§ 4-3-203; 53-3-104.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the _Department of Agriculture_ (board/commission/other authority) on August 12, 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: 04/27/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 06/26/2015

Date: August 12, 2015

Signature: Julius T. Johnson

Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: August 12, 2015

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/11/2017

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

RECEIVED
2015 SEP 18 PM 3: 1
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 09/18/15

Effective on: 12/17/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Emergency Communications Board
SUBJECT:	Wireless Telecommunications Service Provider Contact Information
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 38-1-602
EFFECTIVE DATES:	December 28, 2015 to June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules allow the Board to obtain contact information for all wireless telecommunications service providers authorized to do business in this state in order to facilitate a request from a law enforcement agency for call location information in accordance with T.C.A. § 38-1-602(b).

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 at the public hearing on these rules.

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

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:
Small businesses will be minimally affected by the proposed rules.

2. Projected reporting, recordkeeping, and other administrative costs:
There is minimal additional projected reporting, recordkeeping, or other administrative costs associated with these proposed rules.

3. Probable effect on impacted small businesses and consumers:
There will be minimal effect on impacted small businesses and consumers as a result of these proposed rules.

4. Less burdensome, intrusive, or costly alternative methods:
There is no known less burdensome, intrusive or costly alternative method.

5. Comparison with federal and state counterparts:
The rules appear to comport with other similar state rules. There is no basis for comparison to current federal rules or statutes.

6. Effect of possible exemption of small businesses:
There will be no exemptions created by these rules.

Impact on Local Governments

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

The proposed rules have no projected impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-54-15
Rule ID(s): 6053
File Date: 9-29-15
Effective Date: 12-28-15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Emergency Communications Board
Division:	
Contact Person:	Lee Pope, General Counsel
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243-0582
Phone:	(615) 253-2164
Email:	James.L.Pope@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
0780-06-03	Service Provider Contact Information
Rule Number	**Rule Title**
0780-06-03-.01	Purpose
0780-06-03-.02	Definitions
0780-06-03-.03	Wireless Telecommunications Service Provider Contact Information

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Department of Commerce and Insurance
Emergency Communications Board

Chapter 0780-06-03
Service Provider Contact Information

Table of Contents

0780-06-03-.01 Purpose.
0780-06-03-.02 Definitions.
0780-06-03-.03 Wireless Telecommunications Service Provider Contact Information.

0780-06-03-.01 Purpose.

The purpose of this chapter is to require all wireless telecommunications service providers authorized to do business in this state to submit contact information in order to facilitate requests from law enforcement agencies for call location information in accordance with T.C.A. § 38-1-602(b).

Authority: T.C.A. §§ 38-1-602 and 38-1-604.

0780-06-03-.02 Definitions.

(1) Unless otherwise stated, as used in this chapter and each subsequent chapter of the Rules of the Emergency Communications Board:

(a) "Act" means T.C.A. title 38, chapter 1, part 6;

(b) "Board" means the Emergency Communications Board created by T.C.A. § 7-86-302;

(c) "Contact information" means a company's:

1. Legal name;

2. Brand of wireless product;

3. National Emergency Number Association Identification Number; and

4. The telephone number to be used to obtain subscriber location information twenty-four (24) hours a day, seven (7) days a week.

(d) "Wireless telecommunications service provider" means a provider of "commercial mobile radio service" as that term is defined by 47 C.F.R. § 20.3;

(e) "Public safety answering point" means a facility that has been designated to receive 911 calls and route them to emergency services personnel pursuant to T.C.A. § 7-86-107.

Authority: T.C.A. §§ 38-1-602 and 38-1-604.

0780-06-03-.03 Wireless Telecommunications Service Provider Contact Information.

(1) By no later than December 1, 2015, each wireless telecommunications service provider authorized to do business in this state shall submit its contact information to the board for the purpose of facilitating requests from law enforcement agencies for call location information in accordance with T.C.A. § 38-1-602(b).

(2) Within thirty (30) days of being authorized to do business in Tennessee, a wireless telecommunications service provider shall submit its contact information to the board for the purpose of facilitating requests from law

enforcement agencies for call location information in accordance with T.C.A. § 38-1-602(b).

(3) Each wireless telecommunications service provider shall submit updated contact information to the board no later than seven (7) days following any changes in the contact information previously provided to the board pursuant to 0780-06-03-.03(1) or (2).

(4) The board shall maintain a listing of wireless telecommunications service provider contact information on its website and shall disseminate the listing to all public safety answering points on a quarterly basis.

Authority: T.C.A. §§ 38-1-602 and 38-1-604.

* 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)
Mike Hooks	X				
Woody Boyd	X				
Greg Cothron	X				
Jennifer Estes	X				
Jill Holland	X				
Marvin Kelley	X				
Randy Porter	X				
James Sneed	X				
James Turnbow	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Emergency Communications Board on 05/06/15, 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: 3/10/15

Rulemaking Hearing(s) Conducted on: (add more dates). 05/06/15

ASHLEY M. POPE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 8/24/15

Signature:

Name of Officer: Lee Pope

Title of Officer: General Counsel

Subscribed and sworn to before me on: 08.24.15

Notary Public Signature: Ashley M. Pope

My commission expires on: 01.09.18

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

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9-29-15

Effective on: 12-28-15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 29 AM 10: 33
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Employer and Employee Contests/Filing of Complaint Alleging Discrimination
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 50-3-409 and 50-3-201
EFFECTIVE DATES:	December 21, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 0800-01-08-.06 is amended to remove a phrase that is not consistent with state law.

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

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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 does not have a projected impact on local governments.

7

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

For Department of State Use Only

Sequence Number: 09-37-15
Rule ID(s): 6048-6049
File Date: 9/22/15
Effective Date: 12/21/15

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-01-04	OCCUPATIONAL SAFETY AND HEALTH INSPECTIONS, CITATIONS AND PROPOSED PENALTIES
Rule Number	**Rule Title**
0800-01-04-.18	EMPLOYER AND EMPLOYEE CONTESTS.
Chapter Number	**Chapter Title**
0800-01-08	DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1972
Rule Number	**Rule Title**
0800-01-08-.06	FILING OF COMPLAINT ALLEGING DISCRIMINATION.

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-04

Rule 0800-01-04-.18 Amended

Paragraph (2) of Rule 0800-01-08-.18 EMPLOYER AND EMPLOYEE CONTESTS is amended by removing the text "T.C.A. §50-3-407" and replacing with "T.C.A. §50-3-307(b)" as well as inserting the parenthetical phrase "(as defined for employees in T.C.A. §50-3-106)" after the word "conditions":

Existing Rule:

(2) Any employee or representative of employees of an employer to whom a citation has been issued may, under ~~T.C.A. §50-3-407~~, file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Proposed Amended Rule:

(2) Any employee or representative of employees of an employer to whom a citation has been issued may, under T.C.A. §50-3-307(b), file a written notice with the Commissioner advising the Commissioner of objections to the terms and conditions (as defined for employees in T.C.A §50-3-106) of the citation. Such notice must be received by the Commissioner within twenty (20) days of the receipt by the employer of the citation. The Commissioner shall immediately transmit such notice to the TOSHRC in accordance with the rules of procedure prescribed by the Commission.

Authority: T.C.A. §4-3-1411 and §50-3-201.

Chapter 0800-01-08

Rule 0800-01-08-.06 Amended

Paragraph (4)(c) of Rule 0800-01-08-.06 FILING OF COMPLAINT ALLEGING DISCRIMINATION is amended by removing the text ", resorted in good faith to grievance - arbitration proceedings under a collective bargaining agreement or".

Existing Rule:

(c) However, there may be circumstances which would justify tolling the thirty (30) day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; where the employee has within the thirty (30) day period~~, resorted in good faith to grievance - arbitration proceedings under a collective bargaining agreement or~~ filed a complaint regarding the same general subject with another state or federal agency; or where the discrimination is in the nature of a continuing violation. In the absence of submission of reasonable proof of circumstances justifying the tolling of the thirty (30) day period within ten (10) days of being requested and barring requests for extension of time in which to obtain such proof, the complaint shall be deemed untimely filed and shall not be processed.

Proposed Amended Rule:

(c) However, there may be circumstances which would justify tolling the thirty (30) day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; where the employee as within the thirty (30) day period filed a complaint regarding the same general subject with another state or federal agency; or where the discrimination is in the nature of a continuing violation. In the absence of submission of reasonable proof of circumstances justifying the tolling of the thirty (30) day period within ten (10) days of being requested and barring requests for extension of time in which to obtain such proof, the complaint shall be deemed untimely filed and shall not be processed.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

* 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 9/3/15 (*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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9/3/15

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

JAMIE PRESSON
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN

Subscribed and sworn to before me on: September 3, 2015

Notary Public Signature: Jamie Presson

My commission expires on: March 10, 2019

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

9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/22/15

Effective on: 12/21/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 22 PM 12:43
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Economic and Community Development
DIVISION:	Strategy
SUBJECT:	TNInvestco Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 4-28-101 et seq.
EFFECTIVE DATES:	December 3, 2015, through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Chapter 0500-08-01 is promulgated to ensure compliance with the requirements of Tennessee Code Annotated § 4-28-101 et seq. by authorizing the Department of Economic and Community Development to assess monetary penalties for compliance failures by TNInvestcos. The rules do not effectuate any relevant changes in previous regulations.

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

The Department of Economic and Community Development ("ECD") conducted a review of whether Chapter 0500-08-01 affects small businesses.

(1) Chapter 0500-08-01 may minimally impact the ten (10) existing TNInvestcos by subjecting them to penalty assessments under the rules. However, T.C.A. 4-28-111(d) limits assessments to ten thousand dollars ($10,000) per incidence for failure to comply with the requirements of T.C.A. § 4-28-101 *et seq.* (the "Tennessee Small Business Investment Company Credit Act").

(2) No additional reporting, recordkeeping, and other administrative costs or professional skills are required for compliance with Chapter 0500-08-01. Penalties may only be assessed for failures to comply with requirements already established in the Tennessee Small Business Investment Company Credit Act.

(3) Chapter 0500-08-01 is projected to have no effect on consumers. The probable effect on impacted small businesses is minimal.

(4) ECD is not aware of any less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of Chapter 0500-08-01.

(5) There is no federal or state counterpart to Chapter 0500-08-01.

(6) Exempting impacted small businesses from all or any part of the requirements contained in Chapter 0500-08-01 would compromise the intent of the rules to ensure that those specific impacted small businesses, the TNInvestcos, comply with the requirements of the Tennessee Small Business Investment Company Credit Act.

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)

Chapter 0500-08-01 is not projected to impact local governments.

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

For Department of State Use Only

Sequence Number: 09-06-15
Rule ID(s): 6019
File Date: 9/4/15
Effective Date: 12/3/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission: Department of Economic and Community Development ("ECD")
Division: Strategy
Contact Person: Sharon Kolb, ECD General Counsel
Address: 312 Rosa L. Parks Ave., 27th Floor, Nashville, TN
Zip: 37243
Phone: 615-532-8988
Email: Sharon.Kolb@tn.gov

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

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

Chapter Number	**Chapter Title**
0500-08-01	TNInvestco Program
Rule Number	**Rule Title**
0500-08-01-.01	Definitions
0500-08-01-.02	Timely Funding of Investments
0500-08-01-.03	Documentation of Delivery of Qualified Investment Funds
0500-08-01-.04	Investment Confirmation Letters
0500-08-01-.05	Certificates of Ownership
0500-08-01-.06	Notice Following Material Adverse Change
0500-08-01-.07	Notice Following Liquidity Event
0500-08-01-.08	Return of Proceeds Following Liquidity Event
0500-08-01-.09	Submission of Documents and Fees
0500-08-01-.10	Annual Audit Report, Examination Review, and Cure Period

(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)

Proposed Rules
of the
Tennessee Department of Economic and Community Development

Chapter 0500-08-01
TNInvestco Program

Table of Contents

0500-08-01-.01 Definitions.
0500-08-01-.02 Timely Funding of Investments.
0500-08-01-.03 Documentation of Delivery of Qualified Investment Funds.
0500-08-01-.04 Investment Confirmation Letters.
0500-08-01-.05 Certificates of Ownership.
0500-08-01-.06 Notice Following Material Adverse Change.
0500-08-01-.07 Notice Following Liquidity Event.
0500-08-01-.08 Return of Proceeds Following Liquidity Event.
0500-08-01-.09 Submission of Documents and Fees.
0500-08-01-.10 Annual Audit Report, Examination Review, and Cure Period.

0500-08-01-.01 Definitions.

(1) As used in these rules, the following terms are defined as follows:

(a) "Day" means a calendar day.

(b) "Dissolution" means the winding down of a company, whether voluntary or compulsory; approval or execution of a plan of dissolution; filing of a certificate of dissolution; liquidation or redistribution of substantially all of its assets; or its ceasing to carry on its business or operations, or to provide substantial employment.

(c) "ECD" means the State of Tennessee Department of Economic and Community Development.

(d) "Investment Confirmation Letter" means a letter certified by the Principal Officer of a Qualified Business noticing ECD of the date and dollar amount of a Qualified Investment by a specific TNInvestco.

(e) "Investment Request" means a request made by a TNInvestco pursuant to T.C.A. § 4-28-106(b) for a written determination by ECD that a proposed investment qualifies as a Qualified Investment.

(f) "Liquidity Event" means the merger, sale, or spinoff or other transaction of a Qualified Business, by which some or all of the investment held by a TNInvestco is monetized or otherwise converted to cash, securities, assets, distributions, or other proceeds.

(g) "Material Adverse Change" means any change, effect, event, occurrence, or state of facts that, individually or in the aggregate is, or is reasonably expected to be, materially adverse to the business, results of operations, condition (financial or otherwise), or prospects of a Qualified Business and its consolidated subsidiaries, if any taken as a whole. The term "Material Adverse Change" includes the following:

1. The Dissolution of the Qualified Business;

2. The initiation of bankruptcy, insolvency, reorganization, or similar proceedings or actions by, on behalf of, or against the Qualified Business;

3. A felony conviction or plea of "nolo contendre" resulting in a prison sentence to be served

by an executive, member, or managing partner of the Qualified Business; or a conviction or plea of "nolo contendre" for an act that reflects adversely on his or her honesty, trustworthiness, or fitness as an executive, member, or managing partner of the Qualified Business, including conduct involving dishonesty, fraud, deceit, misrepresentation, or the improper influence of a government agency or official on behalf of, or for the benefit of, the Qualified Business; or

4. A period of ninety (90) Days in which regular communications have ceased between the Qualified Business and a TNInvestco with an ownership interest.

(h) "Principal Officer" means the top officer of a company, including such positions as president, chief executive officer, or managing partner.

(i) "Qualified Business" shall have the meaning assigned to it at T.C.A. § 4-28-102(11).

(j) "Qualified Investment" shall have the meaning assigned to it at T.C.A. § 4-28-102(13).

(k) "Qualified Investment Funds" shall mean all funds received by a TNInvestco pursuant to an Investment Request approved by ECD or deemed approved under T.C.A. § 4-28-106(b) for purposes of making a Qualified Investment in a specific Qualified Business.

(l) "TNInvestco" shall have the meaning assigned to it at T.C.A. § 4-28-102(17).

Authority: T.C.A. §§ 4-28-102(11); 4-28-102(13); 4-28-102(17); 4-28-106; and 4-28-111(d).

0500-08-01-.02 Timely Funding of Investments.

(1) After an Investment Request is approved by ECD or the proposed investment is otherwise deemed a Qualified Investment, one hundred percent (100%) of the Qualified Investment Funds shall be disbursed to the Qualified Business within sixty (60) Days after the date of delivery of the Qualified Investment Funds to the TNInvestco. In the event the TNInvestco is unable to disburse the Qualified Investment Funds to the Qualified Business within sixty (60) Days, the TNInvestco shall return the Qualified Investment Funds. A TNInvestco is prohibited from holding any amount of Qualified Investment Funds for more than sixty (60) Days, including for purposes of making a Qualified Investment in tranches.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.03 Documentation of Delivery of Qualified Investment Funds.

(1) The TNInvestco shall submit to ECD documentation of the delivery of Qualified Investment Funds to a Qualified Business within sixty (60) Days of delivery.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.04 Investment Confirmation Letters.

(1) Within sixty (60) Days after the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD an Investment Certification Letter certified by the Principal Officer of the Qualified Business.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.05 Certificates of Ownership.

(1) After the delivery of Qualified Investment Funds to a Qualified Business, the TNInvestco shall submit to ECD each original certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Qualified Investment within thirty (30) Days after the date of delivery of the certificate of ownership to the TNInvestco. In the event no certificate of ownership is issued by the Qualified Business, within thirty (30) Days after the delivery of the Qualified Investment Funds to the Qualified Business the TNInvestco shall provide written notification to the State that no certificate of ownership is available.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-106 and 4-28-111(d).

0500-08-01-.06 Notice Following Material Adverse Change.

(1) In the event of a Material Adverse Change in a Qualified Business, each TNInvestco with an ownership interest shall provide written notice to ECD within ten (10) Days after the TNInvestco receives notice of, or its Principal Officer has actual knowledge of, the Material Adverse Change. The written notice required by this rule shall include documentation explaining the circumstances of the Material Adverse Change.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-102(11) and 4-28-111(d).

0500-08-01-.07 Notice Following Liquidity Event.

(1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall:

(a) Provide written notice of the Liquidity Event to ECD within thirty (30) Days after the date of the Liquidity Event;

(b) Within thirty (30) Days after the date of the Liquidity Event, provide adequate documentation to ECD that details the transaction and any proceeds generated. Documentation is adequate if it provides all information necessary to determine the State's ownership interest in the proceeds of the Liquidity Event; and

(c) If the Liquidity Event results in ownership of a security, submit to ECD each original certificate of ownership (e.g., stock, membership, or note) issued pursuant to the Liquidity Event within thirty (30) Days after the date of delivery of the certificate to the TNInvestco.

(2) In the event of noncompliance with a subparagraph of this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d).

0500-08-01-.08 Return of Proceeds Following Liquidity Event.

(1) In the event of a Liquidity Event, each TNInvestco with an ownership interest shall return to the State one hundred percent (100%) of the proceeds of the Liquidity Event within thirty (30) Days after the date of delivery of the proceeds to the TNInvestco.

(2) In the event of noncompliance with this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-108 and 4-28-111(d).

0500-08-01-.09 Submission of Documents and Fees.

(1) Each TNInvestco shall submit all required statutory and programmatic documents and fees on or before their assigned due dates. Mandatory documents and fees include the following:

(a) "Fiduciary Duty and Ethics, Waste, Fraud & Abuse Policy Acknowledgment for TNInvestco Program" form due January 31st each year;

(b) "Report on Remaining Designated Capital" due January 31st each year;

(c) Annual review fee due January 31st each year;

(d) Annual certification fee due April 1st each year;

(e) Scorecard due April 30th each year; and

(f) Annual Audit Report and Examination Review due April 30th each year.

(2) In the event of noncompliance with a subparagraph of this rule, a penalty of $1,000 per Day for each document or fee shall be assessed until the noncompliance is cured.

Authority: T.C.A. §§ 4-28-110; 4-28-111(a); 4-28-111(d); and 4-28-113.

0500-08-01-.10 Annual Audit Report, Examination Review, and Cure Period.

(1) Each TNInvestco shall submit to ECD its annual audited financial statements (the "Annual Audit Report"), together with an examination review of follow-on capital, jobs data, and pacing requirement compliance (the "Examination Review"), prepared in accordance with all relevant statutory and programmatic requirements, including T.C.A. § 4-28-110(a)(4), the "Updated Program Policies" memorandum dated February 27, 2013, and the "2014 Guidelines for Preparing Schedules" memorandum dated November 13, 2014, as they may be revised from time to time, as well as any other applicable process memoranda issued by ECD or the Office of the Comptroller of the Treasury. A TNInvestco shall:

(a) Cure any disclaimer, adverse or qualified opinion, finding, material weakness, significant deficiency, or other deficiency relating to the internal controls, accounting standards, and financial statements and notes of the TNInvestco ("Audit and Control Deficiencies") identified in the Annual Audit Report within forty-five (45) Days after the date ECD notifies the TNInvestco;

(b) Cure any disclaimer, adverse or qualified opinion, material noncompliance, error, omission, deviation from relevant policies and procedures, or other deficiency relating to the pacing requirements schedule, jobs and follow-on capital schedule, and schedule of investments ("Schedule and Compliance Deficiencies") identified in the Examination Review within forty-five (45) Days after the date ECD notifies the TNInvestco;

(c) Cure any additional Audit and Control Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco; and

(d) Cure any additional Schedule and Compliance Deficiencies identified by ECD or the Office of the Comptroller of the Treasury within forty-five (45) Days after the date ECD notifies the TNInvestco.

(2) In each event of noncompliance with a subparagraph of this rule, a penalty of $1,000 per Day shall be assessed until the noncompliance is cured. Penalties assessed pursuant to subparagraph (1)(b) of this rule shall not exceed a maximum of $1,000 per Day per schedule. Penalties assessed pursuant to subparagraph (1)(d) of this rule shall not exceed a maximum of $1,000 per Day per schedule. Notwithstanding the foregoing, if the noncompliance results in the assessment of a mandatory penalty of $10,000 pursuant to T.C.A. § 4-28-111(b), an additional penalty shall not be assessed pursuant to this rule for the noncompliance.

Authority: T.C.A. §§ 4-28-110; 4-28-111; and 4-28-113.

* 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)
Not applicable.					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Economic and Community Development on 08/17/2015, 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.

KEVIN RAYBURN STATE OF TENNESSEE NOTARY PUBLIC MAURY COUNTY, TENN.

Date: 8/17/15

Signature:

Name of Officer: Randy Boyd

Title of Officer: Commissioner

Subscribed and sworn to before me on: 8/17/15

Notary Public Signature:

My commission expires on: 1/19/16

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

Herbert H. Slatery III
Attorney General and Reporter

9/2/2015
Date

Department of State Use Only

RECEIVED
2015 SEP -4 AM 9:28
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/4/15

Effective on: 12/3/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Cosmetology and Barber Examiners, Department of Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	Rules of the Barber Board
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 62-3-128
EFFECTIVE DATES:	December 1, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Amendment to Rule 0200-01-.01 sets forth a specific number of students required to be enrolled before a barber school can be granted a license and specifies the number of hours necessary for a student to attend class each week in order to be considered part-time or full-time. Amendment to Rule 0200-01-.06 adds military applicant rule language, clarifies the expiration dates for all categories of individual licenses issued by the Board, and provides a mechanism by which a licensee can place his or her license in inactive status. Amendment to Rule 0200-01-.07 removes the requirement that a sanitary compartment in a barber station contain a fumigant because fumigants can constitute a public health and safety hazard if improperly stored or handled by a licensee. Amendment to Rule 0200-01-.10 provides that all applications for a barber shop license or a barber school license expire within ninety (90) days from the date the application is submitted to the Board if the applicant fails to provide all necessary application information and authorizes the Board to use its discretion in waiving this requirement upon written consent by the applicant.

Public Hearing Comments

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

1. Comment made by Mike Agee: "The Apprenticeship program was never properly debated."

Answer: The Board thanks the public for this comment. The board agrees and does not believe that this was presented to the new board until the apprenticeship program was a bill. However the board does not have a reply to this comment. This debate was in the legislature. The Board is an executive branch agency and is tasked with creating rules that will regulate and enforce this legislation.

2. Comment made by Lisa Thomas: "Will a salon that takes on an apprentice be required to carry a separate kind of insurance?"

Answer: The Board thanks the public for this comment. At this time The Board has not approved any rule that would require a salon to carry a separate or special insurance for the purposes of the apprenticeship program. At this time the board considers this to be under the purview of the salon owners as to what insurance they carry.

3. Comment made by Lisa Thomas: "Will the overall curriculum for apprenticeship students depart from the curriculum that is currently used?"

Answer: The Board thanks the public for this comment. At this time the board has not approved any curriculum changes for students who participate in the apprenticeship program. However, as stated in Rule 0440-01-09 (4) "Apprenticeship students shall complete instructional hours and pass the initial theory examination prior to initiating apprenticeship activities in a salon, shop, or establishment."

4. Comment made by Lisa Thomas and Mike Agee: "Will tuition be paid to the salons?" "Will the apprentice be paid by the salon?"

Answer: The Board thanks the public for this comment. At this time the rules promulgated do not regulate this aspect of the program. The arrangement regarding fees, and wages paid to an apprentice will be under the purview of those participating parties.

5. Comment made by Mike Agee: "Are salons going to become extensions of cosmetology schools?" Who will inspect these extensions?

Answer: The Board thanks the public for this comment. At this time the rules promulgated only regulate this relationship to the following extent; Rule 0440- 01-03 (3)(h) (1) (i) (2) (iii) and (iv), will require the supervising professional of an apprenticeship student to submit a log of apprenticeship hours to the school, and to notify the school when the apprenticeship ends. The hours will be reported to the school at the first of each month. Beyond these regulations the extent to which the school and salons of apprenticeship students are involved with each other is under the purview of the participating parties. The state already inspects all salons.

6. Comment made by Lisa Thomas: "What date will this go into effect?"

Answer: The Board thanks the public for this comment. After the amendments to the rule are approved by the

Board the rules are then filed with the Attorney General's office for approval. After approval is gained the rules will be filed with the Secretary of State. Ninety days from that filing the rules will become effective.

7. Comment made by Ryan Herd: "It would be more appropriate for a licensed instructor to be present during the 750 hours of apprenticeship time. The school is required to have a licensed instructor and now salons are allowed to teach students without having that certification."

Answer: The Board thanks the public for this comment. The requirements for a supervisory licensed professional created under Rule 0440- 01-03 (3) (h) (1) (i) (3), does not require him or her to obtain an instructor's license. Legal counsel for the board has advised that the Board does not have the discretion to make such a requirement.

8. Comment made by Ryan Herd: When consumers enter a school facility to obtain services they understand that there are unlicensed persons working. When consumers walk into a salon they will not have this same understanding and will be less forgiving of possible incidents due to unlicensed persons.

Answer: The Board thanks the public for this comment. Salons that are apprenticing students will be required to inform the public that an apprentice is working in their shop. An 8"x10" sign will be displayed in such shops conspicuously. Apprentices will also wear appropriate identification.

9. Comment made by Ryan Herd: How long is the apprenticeship program allowed to take? There needs to be a deadline since there is deadline on school hours.

Answer: The Board thanks the public for this comment. The timeline for apprenticeship hours can be found in Rule 0440-01-06 (7) "The apprenticeship program must be completed within one and half times of the original enrollment contract. The board may grant waiver of this requirement for good cause shown."

10. Comment made by Representative Parkinson: Representative Antonio Parkinson commented on the overall statutory scheme regarding cosmetology apprenticeships and the method by which the bill was passed. He also spoke on the reasoning to introducing and passing this bill.

Answer: The Board thanks Representative Parkinson for his comments regarding the Apprenticeship program and answering the questions of the board members.

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

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

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

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

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

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

These rules do not create any new compliance or reporting requirements.

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

The proposed "military applicant" rule will expedite the licensure process for certain military personnel, and in some cases, for the spouses of military personnel. Otherwise, these rules do not set out compliance or reporting requirements.

5. Consolidation or simplification of compliance or reporting requirements:

There are no new compliance and reporting requirements as a result of this amendment.

6. Performances standards for small businesses:

These rules do not set out operational or design standards. As such, there are no performance standards for small businesses as a result of this amendment.

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

It does not appear that these amendments will erect barriers or have other effects which would stifle entrepreneurial activity, curb innovation, or increase costs.

Date Approved by Board: March 24, 2014

Economic Impact Statement pursuant to T.C.A. § 4-5-401, et seq.:

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;:

Answer:
Any barber school, barber shop, cosmetology school, and any shop holding a license to provide regulated cosmetology-related services to the public could be impacted by these rules could be. These rules implement temporary permit system for military spouses and an apprenticeship program for cosmetology students, both of which could provide wage earning service providers to small businesses in an expedited manner. In the case of the apprenticeship program, cosmetology schools would likely bear some cost through the necessity of devising a reporting system for students who participate. However, the apprenticeship program is not required and no additional costs would be associated with
Cosmetology schools who decide not to participate.

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:

Answer:
For cosmetology schools which elect to participate in the apprenticeship program, a system to maintain records for apprentice students would have to be devised in association with the partnering shops. The administrative skills necessary to do so would not exceed those required for existing recordkeeping duties. Registered licensees

who serve as overseers for apprentice students while employed at a participating shop would need to be utilized by that shop; the skill level of this employee would need to meet or exceed 10 years of experience.

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

Answer:
The potential workforce immediately available for small businesses would be expanded somewhat through the temporary permitting of military spouses who qualify and the apprentice students participating in these programs.

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:

Answer:
These two methods of expediting persons into the barbering and cosmetology professions do not exist prior to these rules, therefore, there is no less burdensome, intrusive or less costly alternative methods of implementing them.

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

Answer:
The State Board of Cosmetology and Barber Examiners is the sole agency for licensing and regulating the professions it oversees; there are no counterparts at the state or federal level.

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:

Answer
The apprenticeship program is made elective by statute and is therefore not required for any school or shop holding a license with the Board.

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 State Board of Cosmetology and Barber Examiners does not project any change in local government revenue at any level as a result of these rules.

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

For Department of State Use Only

Sequence Number: 09-02-15
Rule ID(s): 6016
File Date: 9/2/15
Effective Date: 12/1/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Cosmetology and Barber Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Laura E. Martin, Assistant General Counsel
Address:	500 James Robertson Parkway; Nashville, TN
Zip:	37243
Phone:	(615) 253-3702
Email:	Laura.Martin@tn.gov

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

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

Chapter Number	**Chapter Title**
0200-01	Rules of the Barber Board
Rule Number	**Rule Title**
0200-01-.01	Requirements for School License
0200-01-.06	Expiration of Certificates of Registration
0200-01-.07	Equipment and Location Requirements for Barber Shops
0200-01-.10	Original License Fee

RULES
OF
TENNESSEE STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

CHAPTER 0440-
01 LICENSING

TABLE OF CONTENTS

0200-01-.01 Requirements for School License
0200-01-.02 Curriculum
0200-01-.03 Transcripts
0200-01-.04 Applications for Examination
0200-01-.05 Posting of Licenses
0200-01-.06 Expiration of Certificates of Registration
0200.01-.07 Equipment and Location Requirements for Barber Shops
0200-01-.08 Educational Equivalent
0200-01-.09 Examinations
0200-01-.10 Original License Fee
0200-01-.11 Fees
0200-01-.12 Inspections
0200-01-.13 License Qualifications
0200-01-.14 Teacher Training Programs
0200-01-.15 Student Kits
0200-01-.16 Demonstrations
0200-01-.17 Alcoholic Beverages
0200-01-.18 Civil Penalties

Rule 0200-01-.01 is amended by adding new subparagraphs (4)(d) and (4)(e) to read as follows:

0200-01-.01 REQUIREMENTS FOR SCHOOL LICENSE.

(4) The requirements of the school for enrollment of students are:

(d) The school must have at least fifteen (15) students enrolled (part-time or full-time) and the school must provide proof of same to the Board in the form of signed student enrollment agreements prior to being granted a barber school license.

(e) Full-time barber school students must attend school for at least twenty-five (25) hours per week and part-time barber school students must attend school for at least fifteen (15) hours per week.

Authority: T.C.A. §§62-3-122, 62-3-123, and 62-3-128(a).

Rule 0200-01-.01 is amended by amending paragraphs (1), (2), (3), and (4) to read as follows, and by adding new paragraphs (5)-(12) as follows:

0200-01-.06 EXPIRATION OF CERTIFICATES OF REGISTRATION.

(1) All certificates of registration for master barbers and barber instructors shall expire ~~on the anniversary date of the original date of licensure.~~ biennially on the last day of the month in which the original certificate was granted.

(2) All certificates of registration for barber shops shall expire ~~on the anniversary date of the original date of licensure.~~ biennially on the last day of the month in which the original certificate was granted.

(3) All certificates of registration for technicians shall expire biennially on th~~e licensee's date of birth.~~ last day of the original month of licensure.

(4) All certificates of registration for barber schools or colleges shall expire annually on ~~the anniversary of the original date of licensure.~~ the last date of the month of the original date of licensure. If a barber school or barber college certificate of registration is not renewed within one (1) year from the date of expiration of the license, a new barber school or barber college certificate of registration application will be required.

(5) A master barber or barber instructor may place his or her certificate of registration into inactive status by completing a form as prescribed by the Board and by submitting that form to the Board prior to the expiration of his or her certificate of registration. A master barber or

barber instructor whose certificate of registration is in inactive status may not engage in any conduct for which a certificate of registration is required while his or her certificate of registration is in inactive status.

(6) When a master barber or barber instructor places his or her certificate of registration into inactive status, such certificate of registration may only remain in inactive status until the end of the current renewal period. The Board may, at its discretion, waive this requirement for good cause shown and may attach any lawful conditions it deems appropriate to such a waiver.

(7) A master barber or barber instructor whose certificate of registration is in inactive status may reactivate his or her certificate of registration to active status by completing a form as prescribed by the Board and demonstrating compliance with all applicable requirements for certificate of registration reinstatement.

(8) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license or certificate under Tennessee Code Annotated title 62, chapter 3 upon application and payment of all fees required for issuance of a regular license or certificate of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's license or certificate does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including - but not limited to - education, training, or experience, in order to meet the requirements for the license or certificate to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular license or certificate of the same type, which shall allow such person to perform services as if fully licensed or certified for a set period of time that is determined to be sufficient for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full certificate of registration shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full certificate of registration had been issued at that time.

2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full certificate of registration.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full certificate of registration, the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full certificate of registration of the same type.

(9) Military education, training or experience completed by a person described in T.C.A. § 4-3-1304 toward the qualifications to receive any certification issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such certification.

(10) Any licensee who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose certificate of registration expires during the period of activation shall be eligible for renewal upon the licensee being released from active duty without:

(a) Payment of late fees or other penalties;

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

2. The person performs the licensed or certified occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Board, or

(c) Performing any other similar act typically required for the renewal of a license or certification.

(11) The license, certification, or permit shall be eligible for renewal pursuant to paragraph (10) for six (6) months from the person's release from active duty.

(12) Any person renewing under paragraph (10) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any certificate of registration pursuant to that paragraph.

Authority: T.C.A. §§56-1-302(b), 62-3-128, ~~and~~ 62-3-129~~.~~, and 4-3-1304.

Rule 0200-01-.07 is amended by amending subparagraph (1)(d) to read as follows:

0200-01-.07 EQUIPMENT AND LOCATION REQUIREMENTS FOR BARBER SHOPS.

(1) Every barber shop shall be equipped with at least:

(d) One (1) dry sterilizer or sanitary compartment~~, with fumigant~~ per station;

Authority: T.C.A. §§62-3-113 and 62-3-128.

Rule 0200-01-.10 is amended by adding new paragraph (2) to read as follows:

0200-01-.10 ORIGINAL LICENSE FEE.

(2) Barber shop and barber school applications shall expire within ninety (90) days of the date the application is submitted to the Board if the applicant fails to provide all necessary application documentation and information to the Board. The Board may, in its sole discretion and for good cause shown, waive this requirement upon written request by the applicant.

Authority: T.C.A. §§62-3-113, 62-3-128, and 62-3-129.

* 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)
Ron R. Gillihan	x				
Nina Coppinger	X				
Bobby Finger				x	
Frank Gambuzza	X				
Yvette Granger				x	
Kelly Barger	X				
Patricia Richmond	X				
Mona Sappenfield	X				
Judy McAllister	X				
Amy Tanksley	X				
Diane Teffeteller	X				
Anita Allen				x	
Ron R. Gillihan	x				
Nina Coppinger	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by The Board of Cosmetology and Barber Examiners on August 20, 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: *(11/03/14)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(01/05/15)*

Date: 8/20/15

Signature: Laura E. Martin

Name of Officer: Laura E. Martin

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 08/20/2015

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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.

RECEIVED 2015 SEP -2 PM 12:15 SECRETARY OF STATE PUBLICATIONS

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

8/31/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/2/15

Effective on: 12/1/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Cosmetology and Barber Examiners, Department of Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	Licensing and Sanitary Rules Fee created for retired license reactivation
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 62-4-105 and 62-4-120
EFFECTIVE DATES:	December 1, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Amendment to Rule 0440-01-.01 Requirements for School License: This amendment adjusts the required items necessary to receive a school license from the Board and further defines the requirements for instructional floor space. Amendment to Rule 0440-01-.03 Curriculum: This amendment adds requirements and procedures for a licensed school to offer a program that includes apprenticeship training. Amendment to Rule 0440-01-.04 High School Equivalents: This amendment adds a requirement that a licensed school be responsible for verifying an applicant's high school equivalency. Amendment to Rule 0440-01-.05 Requirements for Schools: This amendment allows schools to receive a license to teach only natural hair styling. Amendment to Rule 0440-01-.06 Enrollment of Students: This amendment requires that a candidate's application information be included in the student's file. Amendment to Rule 0440-01-.09 Examination Passing Scores and School Attendance Ratio: This amendment

adjusts the period for passing all examinations to three years.

Amendment to Rule 0440-01-.11 Teacher Training Programs: This amendment adds the specific disciplines for which an individual may be licensed to teach.

Amendment to Rule 0440-01-.13 Fees: This amendment adds a fee for retired license reactivation, a penalty for late monthly reporting for schools, and requires that the reciprocity fee must be paid in advance.

Amendment to Rule 0440-01-.14 Civil Penalties: This amendment compresses the list of authorities for which a civil penalty may be assessed for violation thereof.

Amendment to Rule 0440-01-. 15 Practice by Instructor: This amendment deletes a reference to a pre-approved continuing education provider and requires an instructor requesting an extension to comply with continuing education requirements to show good cause.

New Rule 0440-01-.16 Schools Providing Limited Instruction: This rule clarifies that the Board may license a school to provide instruction in only a particular discipline.

New Rule 0440-01-. 17 Communication with the Board: This rule establishes requirements for a registrant's communication with the Board in the course of official business.

New Rule 0440-01-.18 Expedited Licensing for Military Spouses: This rule provides a procedure for issuing a temporary permit to practice a Board-regulated profession while applying for a full license.

Amendment to Rule 0440-02-.01 Definitions: This amendment adds descriptions for shops, unprofessional conduct and violations.

Amendment to Rule 0440-02-.04 Posting of Rules: This amendment deletes the requirement that licenses be laminated and requires every license to be prominently displayed.

Amendment to Rule 0440-02-. 07 Equipment: This amendment deletes references to fumigants and adds a requirement that any property approved by the Board for a licensed shop must have a separate entrance.

Amendment to Rule 0440-02-.08 Attire: This amendment establishes requirements for identifying apprenticeship students while learning in the field.

Amendment to Rule 0440-02-.10 Animals: This amendment requires that all animals present in a licensed establishment must be authorized by the Americans with Disabilities Act.

Public Hearing Comments

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

1. Comment made by Mike Agee: "The Apprenticeship program was never properly debated."

Answer: The Board thanks the public for this comment. The board agrees and does not believe that this was presented to the new board until the apprenticeship program was a bill. However the board does not have a reply to this comment. This debate was in the legislature. The Board is an executive branch agency and is tasked with creating rules that will regulate and enforce this legislation.

2. Comment made by Lisa Thomas: "Will a salon that takes on an apprentice be required to carry a separate kind of insurance?"

Answer: The Board thanks the public for this comment. At this time The Board has not approved any rule that would require a salon to carry a separate or special insurance for the purposes of the apprenticeship program. At this time the board considers this to be under the purview of the salon owners as to what insurance they carry.

3. Comment made by Lisa Thomas: "Will the overall curriculum for apprenticeship students depart from the curriculum that is currently used?"

Answer: The Board thanks the public for this comment. At this time the board has not approved any curriculum changes for students who participate in the apprenticeship program. However, as stated in Rule 0440-01-09 (4) "Apprenticeship students shall complete instructional hours and pass the initial theory examination prior to initiating apprenticeship activities in a salon, shop, or establishment."

4. Comment made by Lisa Thomas and Mike Agee: "Will tuition be paid to the salons?" "Will the apprentice be paid by the salon?"

Answer: The Board thanks the public for this comment. At this time the rules promulgated do not regulate this aspect of the program. The arrangement regarding fees, and wages paid to an apprentice will be under the purview of those participating parties.

5. Comment made by Mike Agee: "Are salons going to become extensions of cosmetology schools?" Who will inspect these extensions?

Answer: The Board thanks the public for this comment. At this time the rules promulgated only regulate this relationship to the following extent; Rule 0440- 01-03 (3)(h) (1) (i) (2) (iii) and (iv), will require the supervising professional of an apprenticeship student to submit a log of apprenticeship hours to the school, and to notify the school when the apprenticeship ends. The hours will be reported to the school at the first of each month. Beyond these regulations the extent to which the school and salons of apprenticeship students are involved with each other is under the purview of the participating parties. The state already inspects all salons.

6. Comment made by Lisa Thomas: "What date will this go into effect?"

Answer: The Board thanks the public for this comment. After the amendments to the rule are approved by the Board the rules are then filed with the Attorney General's office for approval. After approval is gained the rules will be filed with the Secretary of State. Ninety days from that filing the rules will become effective.

7. Comment made by Ryan Herd: "It would be more appropriate for a licensed instructor to be present during the 750 hours of apprenticeship time. The school is required to have a licensed instructor and now salons are allowed to teach students without having that certification."

Answer: The Board thanks the public for this comment. The requirements for a supervisory licensed professional created under Rule 0440- 01-03 (3) (h) (1) (i) (3), does not require him or her to obtain an instructor's license. Legal counsel for the board has advised that the Board does not have the discretion to make such a requirement.

8. Comment made by Ryan Herd: When consumers enter a school facility to obtain services they understand that there are unlicensed persons working. When consumers walk into a salon they will not have this same understanding and will be less forgiving of possible incidents due to unlicensed persons.

Answer: The Board thanks the public for this comment. Salons that are apprenticing students will be required to inform the public that an apprentice is working in their shop. An 8"x10" sign will be displayed in such shops conspicuously. Apprentices will also wear appropriate identification.

9. Comment made by Ryan Herd: How long is the apprenticeship program allowed to take? There needs to be a deadline since there is deadline on school hours.

Answer: The Board thanks the public for this comment. The timeline for apprenticeship hours can be found in Rule 0440-01-06 (7) "The apprenticeship program must be completed within one and half times of the original enrollment contract. The board may grant waiver of this requirement for good cause shown."

10. Comment made by Representative Parkinson: Representative Antonio Parkinson commented on the overall statutory scheme regarding cosmetology apprenticeships and the method by which the bill was passed. He also spoke on the reasoning to introducing and passing this bill.

Answer: The Board thanks Representative Parkinson for his comments regarding the Apprenticeship program and answering the questions of the board members.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

Each agency shall employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business. The agency shall consider, but not be limited to, each of the following methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety, and well-being:

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules because the Board is the sole authority for establishing minimum requirements for obtaining and maintaining a license for the professions it regulates.

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

The rules are clear in purpose and intended application and not subject to varying interpretations.

3. The establishment of flexible compliance and reporting requirements for small businesses:

Regardless of size, all establishments providing services under regulation of the Board in this state are subjected to the same minimum standards.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

There is no variation in reporting requirements for establishments in Tennessee of any size.

5. The consolidation or simplification of compliance or reporting requirements for small businesses:

These amendments address the operation of licensed establishments of all sizes and they strive to simply all requirements as they apply to establishments of any size.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The Board determines minimum requirements for licensure and does not dictate business practices of establishments.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The amended rules proposed do not contemplate an impediment to innovation or increase in costs for providing services beyond that which will be required to implement any new variations on business practices authorized by these rules.

Economic Impact Statement pursuant to T.C.A. § 4-5-401, et seq.:

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;

Answer:
Any barber school, barber shop, cosmetology school, and any shop holding a license to provide regulated cosmetology-related services to the public could be impacted by these rules could be. These rules implement temporary permit system for military spouses and an apprenticeship program for cosmetology students, both of which could provide wage earning service providers to small businesses in an expedited manner. In the case of the apprenticeship program, cosmetology schools would likely bear some cost through the necessity of devising a reporting system for students who participate. However, the apprenticeship program is not required and no additional costs would be associated with
Cosmetology schools who decide not to participate.

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:

Answer:
For cosmetology schools which elect to participate in the apprenticeship program, a system to maintain records for apprentice students would have to be devised in association with the partnering shops. The administrative skills necessary to do so would not exceed those required for existing recordkeeping duties. Registered licensees who serve as overseers for apprentice students while employed at a participating shop would need to be utilized by that shop; the skill level of this employee would need to meet or exceed 10 years of experience.

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

Answer:
The potential workforce immediately available for small businesses would be expanded somewhat through the temporary permitting of military spouses who qualify and the apprentice students participating in these programs.

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:

Answer:
These two methods of expediting persons into the barbering and cosmetology professions do not exist prior to these rules; therefore, there are no less burdensome, intrusive or less costly alternative methods of implementing them.

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

Answer:
The State Board of Cosmetology and Barber Examiners is the sole agency for licensing and regulating the professions it oversees; there are no counterparts at the state or federal level.

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:

Answer:
The apprenticeship program is made elective by statute and is therefore not required for any school or shop holding a license with the Board.

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 State Board of Cosmetology and Barber Examiners does not project any change in local government revenue at any level as a result of these rules.

23

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

For Department of State Use Only

Sequence Number: 09-03-15
Rule ID(s): 6017-6018
File Date: 9/2/15
Effective Date: 12/11/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	State Board of Cosmetology and Barber Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Laura E. Martin
Address:	500 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-3702
Email:	Laura.Martin@tn.gov

Revision Type (check all that apply):

x Amendment
x New
___ Repeal

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

Chapter Number	**Chapter Title**
0440-01	Licensing
Rule Number	**Rule Title**
0440-01-.01	Requirements for School License
0440-01-.03	Curriculum
0440-01-.05	Requirements for Schools
0440-01-.06	Enrollment of Students
0440-01-.09	Examination Passing Scores and School Attendance Ratio
0440-01-.11	Teacher Training Programs
0440-01-.13	Fees
0440-01-.14	Civil Penalties
0440-01-.15	Practice by Instructor
0440-01-.16	Schools Providing Limited Instruction
0440-01-.17	Communication with the Board
0440-01-.18	Expedited Licensing for Certain Military Personnel and Spouses

Chapter Number	Chapter Title
0440-02	Sanitary Rules
Rule Number	**Rule Title**
0440-02-.01	Definitions
0440-02-.04	Posting of Rules and Licenses
0440-02-.07	Equipment
0440-02-.08	Attire
0440-02-.10	Animals

RULES
OF
TENNESSEE STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

CHAPTER 0440-01
LICENSING

TABLE OF CONTENTS

0440-01-.01 Requirements for School License
0440-01-.02 Change of School Ownership and Relocation
0440-01-.03 Curriculum
0440-01-.04 High School Equivalents
0440-01-.05 Requirements for Schools
0440-01-.06 Enrollment of Students
0440-01-.07 Student Kits.
0440-01-.08 Expiration of School Registration Renewal
0440-01-.09 Examination Passing Scores and School Attendance Ratio
0440-01-.10 Original License Fee
0440-01-.11 Teacher Training Programs
0440-01-.12 Demonstrations
0440-01-.13 Fees
0440-01-.14 Civil Penalties
0440-01-.15 Practice by Instructor
0440-01-.16 Schools Providing Limited Instruction
0440-01-.17 Communication with the Board
0440-01-.18 Expedited Licensing for Certain Military Personnel and Spouses

Rule 0440-01-.01 Requirements for School License is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.01 REQUIREMENTS FOR SCHOOL LICENSE.

(1) The Board of Cosmetology and Barbering Examiners (hereinafter the "Board") will not issue, reissue, or renew a license to operate a school of cosmetology unless the school is equipped with all workable equipment consisting of at least:

(a) one (1) work station with adjustable chair per student working on the clinic floor with a minimum of twenty (20) stations;

(b) five (5) shampoo basins, with hot and cold running water, adequately spaced;

(c) five (5) manicure tables;

(d) a minimum of five (5) working floor-based hooded dryers;

(e) ten (10) mannequins;

(f) one (1) straight chair in the theory classroom for each student attending the class;

(g) one (1) wet sterilizer at each student work station;

(h) one (1) enclosed storage area for clean towels;

(i) one (1) covered container for soiled towels;

(j) one (1) covered trash container maintained in a sanitary condition;

(k) dry sterilizer at each student work station;

(l) ultra violet sanitizer;

(m) time sheet/time clock; and

(n) access to a minimum of two (2) restrooms.

(2) A school of cosmetology offering an aesthetics curriculum shall also be equipped with all workable equipment consisting of at least:

(a) sufficient facial steamers;

(b) one (1) suction machine or a Level I or II Microdermabrasion machine;

(c) ~~one (1) galvanic machine~~ one (1) light based device with the manufacturer's intended commercial use statement for hair removal and skin enhancement of face and body;

(d) ~~one (1) magnifying lamp~~ sufficient protective eyewear (glasses) recommended by manufacturer of laser/light devices for each student and instructor;

(e) ~~one (1) reclining facial chair~~; one (1) LED light with the manufacturers intended use statement for skin improvement;

(f) ~~one (1) electric brushing machine~~; one (1) wax depilatory heater pot with manufacturer's intended commercial use statement;

(g) ~~one (1) electric heating mask~~ one (1) hands free magnifying lamp;

(h) ~~one (1) pair electric heating mitts~~ one (1) hot towel cabin;

(i) ~~one (1) sink which provides hot and cold running water other than the bathroom~~ one (1) reclining facial chair/table;

(j) ~~one (1) enclosed storage area for clean towels~~ one (1) electric brushing machine or sonic brushing device;

(k) ~~one (1) covered container for soiled towels~~ one (1) sink which provides hot and cold running water other than the bathroom;

(l) ~~one (1) high frequency instrument~~; one (1) ultraviolet sanitizer

(m) ~~one (1) ultraviolet sanitizer~~ one (1) covered trash container maintained in a sanitary condition at each teaching station;

(n) ~~one (1) covered trash container maintained in a sanitary condition~~ sufficient work area for each student; ~~and~~

(o) ~~sufficient work area for each student~~ one (1) covered and labeled container for soiled towels.

(p) one (1) wet sterilizer;

(q) one (1) professional makeup station representing a color matrix palette of makeup products;

(r) sufficient disposable applicators for makeup application;

(s) one (1) skin care product kit containing two products from each category: cleansers, astringent and toners, moisturizer, problem prep, and protective products;

(t) one (1) Autoclave instrument sanitizer;

(u) one (1) sharps container for biohazard material removal;

(v) one (1) blood spill kit; and

(w) all containers for cosmetic products must be properly labeled.

(3) Requirements for Instructional Floor Space

(a) ~~A school of cosmetology offering a manicuring curriculum shall also be equipped with adequate instructional space for manicuring so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-1-.03.~~ "Instructional floor space" means the floor space of a school designated primarily for the instruction of students and shall not include such spaces as storage, restrooms, utility rooms, passageways, or inhabited administrative spaces such as reception areas, offices and break areas.

(b) ~~A school of cosmetology offering a natural hair styling curriculum shall also be equipped with adequate instructional space for natural hair styling so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-1-.03~~ A school of cosmetology offering a manicuring curriculum shall also be equipped with adequate instructional floor space for manicuring so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.

(c) ~~A school of cosmetology offering a shampooing curriculum shall also be equipped with adequate instructional space for shampooing so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-1-.03.~~ A school of cosmetology offering a natural hair styling curriculum shall also be equipped with adequate instructional floor space for natural hair styling so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.

(d) ~~A school of cosmetology offering an aesthetics curriculum shall also be equipped with adequate instructional space for aesthetics so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-1-.03~~ A school of

cosmetology offering a shampooing curriculum shall also be equipped with adequate instructional floor space for shampooing so as to not compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.

(e) A school of cosmetology offering an aesthetics curriculum shall also be equipped with adequate instructional floor space for aesthetics so as not to compromise or disrupt the teaching of cosmetology curriculum prescribed in Rule 0440-01-.03.

(4) Floor Plan

(a) A proposed floor plan must be submitted to and approved by the Board before:

1. issuance of a license to operate a new school of cosmetology;

2. issuance of a license to operate a school of cosmetology whose ownership has changed;

3. reissuance of a license to operate a relocated school of cosmetology;

(b) ~~where required under this paragraph, the floor plan shall provide for, and the school shall contain, at least 2200 square feet of instructional floor space, including an enclosed classroom for theory instruction.~~ For all schools other than specialized schools as described in subparagraph (4)(c), below, The floor plan shall provide for, and the school shall contain, at least 2200 square feet of instructional floor space, including an enclosed classroom for theory instruction.

(c) The floor plan for a specialized school solely offering a course of study in aesthetics, manicuring, or natural hair styling shall provide for, and the school shall contain adequate floor space as determined by the Board.

(5) New School.

(a) A new school shall be closed to the public for ninety (90) days after the issuance of its license unless the school has students enrolled with the required two hundred (200) or more hours to perform cosmetology services on the public.

(b) A branch school shall be considered a new school unless the school has students enrolled with the required two hundred (200) or more hours to perform cosmetology services on the public.

(c) If an existing school requires an expansion campus facility, the facility must be located within two (2) miles of the main campus.

(d) A specialized school solely offering a course of study in aesthetics, manicuring, or natural hair styling shall have a minimum of five (5) students.

Authority: T.C.A. §§62-4-105(e), 62-4-120(f), 62-4-122, and 62-4-122(g)(2)62-4-116, 62-4-117.

Rule 0440-01-.03 Curriculum is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.03 CURRICULUM.

((1) "Apprenticeship student" means a student enrolled in a school participating in an apprenticeship program with the intention of completing the school's curriculum under that

school's apprenticeship program.

(2) "Supervising licensed professional" means a licensee in the field of study of an enrolled apprenticeship student who is in responsible charge of supervising and accounting for that student's apprenticeship program creditable activities and providing the participating school with the student's apprenticeship activity record.

(3) (a) The fifteen hundred (1,500) clock hours/ 45 credit hours of instruction required of applicants for a license to practice cosmetology shall be apportioned as follows:

~~(a)~~1. General.....300 clock hours/ 9 credit hours Sterilization, sanitation and bacteriology, anatomy and physiology, shop ethics, personality and salesmanship, state law.

~~(b)~~2. Chemical.....600 clock hours/ 18 credit hours Permanent waves, hair relaxer, hair coloring, bleaching and toning, sculptured nails, hair structure and chemistry.

~~(c)~~3. Physical.....600 clock hours/ 18 credit hours Shampooing and rinses, hair and scalp care, hair shaping, hairdressing and styling, facials, arching, lash and brow tinting, manicures and pedicures.

~~(2)~~ (b) The six hundred (600) clock hours/ 18 credit hours of instruction required of an applicant for a license to practice manicuring shall be apportioned as follows:

~~(a)~~1. General.....150 clock hours/ 4.5 credit hours Sterilization, sanitation and bacteriology, anatomy and physiology, state law, salon management, and ethics.

~~(b)~~2. Chemical.....100 clock hours/ 3 credit hours Product knowledge, ingredients and usage of materials, manicuring and pedicuring, EPA and OSHA requirements.

~~(c)~~3. Physical.....350 clock hours/ 10.5 credit hours Massage, manicuring, pedicuring, nail care, nail artistry, nail wraps, sculptured nails, nail tips, gel nails, and nail safety.

~~(3)~~(c) The seven hundred and fifty (750) clock hours/ 22.5 credit hours of instruction required of an applicant for a license to practice aesthetics shall be apportioned as follows:

~~(a)~~1. General.....150 clock hours/ 4.5 credit hours Sterilization, sanitation and bacteriology, professional ethics, personality, salesmanship, anatomy and physiology, and state law.

~~(b)~~2. Chemical.....150 clock hours/ 4.5 credit hours Skin conditions and disorders, nutrition, aging factors, product ingredients and usage, waxing, lash and brow tinting, OSHA and EPA requirements.

~~(c)~~3. Physical.....450 clock hours/ 13.5 credit hours Massage movements and manipulations, masks and packs, facial treatments with and without the use of machines, skin analysis and consultation, application of all products and machines, color psychology, make-up and corrective make-up arching.

~~(4)~~(d) The three hundred (300) clock hours/ 9 credit hours of instruction required of an

applicant for a license to practice shampooing shall be apportioned as follows:

~~(a)~~1. General.....100 clock hours/ 3 credit hours Sanitation, sterilization, bacteriology, anatomy, physiology, state law, shampooing and draping, hair and scalp massage.

~~(b)~~2. Chemical.....50 clock hours/ 1.5 credit hours Chemistry and composition of shampoos and conditioners, product knowledge, EPA and OSHA requirements.

~~(c)~~3. Physical.....150 clock hours/ 4.5 credit hours Hair and scalp massage, hair and scalp care, shampooing and rinsing foreign material from hair, shop management (answering phone, scheduling appointments, ordering supplies, taking inventory, and selling to clients).

~~(5)~~(e) The three hundred (300) clock hours/ 9 credit hours of instruction required of an applicant for a natural hair stylist license shall be apportioned as follows:

~~(a)~~1. General.....120 clock hours/ 3.6 credit hours Sanitation, sterilization, bacteriology, shampooing, draping, disorders of hair and scalp, state law and salon management.

~~(b)~~2. Physical.....180 clock hours/ 5.4 credit hours Twisting, wrapping, weaving, extending, locking, braiding and natural hair styling, by hand or mechanical appliances.

~~(6)~~(f) The three hundred (300) clock hours/ 9 credit hours of instruction required of applicants for an instructor's license shall include no less than a total of one hundred (100) clock hours/ 3 credit hours in lesson planning and motivation.

~~(7)~~(4) To the extent that the prescribed curricula for courses of instruction are substantially similar, the Board may allow general hours of credit accumulated by a student to be transferred from one course of instruction to another. A student shall be allowed to transfer hours only once.

~~(8)~~(5) Any person holding a valid Tennessee barber license will be given credit for seven hundred and fifty (750) clock hours/ 22.5 credit hours toward a Tennessee cosmetology license. In order to be eligible for this credit, a barber must be enrolled in a cosmetology school full time, a minimum twenty-five (25) hours per week, not to exceed forty-eight (48) hours per week. After the student has completed the first seven hundred and fifty (750) clock hours/ 22.5 credit hours in a cosmetology school, the Board may apply the second seven hundred and fifty (750) hours/ 22.5 credit hours for the purpose of graduating and being permitted to take the cosmetology examination.

~~(a). In order to be eligible for the above credit, a barber must be enrolled in a cosmetology school full time, a minimum twenty-five (25) hours per week, not to exceed forty-eight (48) hours per week. After the student has completed the first seven hundred and fifty (750) clock hours/ 22.5 credit hours in a cosmetology school, the Board may apply the second seven hundred and fifty (750) hours/ 22.5 credit hours for the purpose of graduating and being permitted to take the cosmetology examination.~~

(5) Notwithstanding any provision to the contrary, any school operated under the Tennessee Cosmetology Act of 1986 may develop courses of instruction and practice incorporating an apprenticeship curriculum, which allows an applicant to obtain fifty percent (50%) of the required hours for a specific license through classroom instruction and fifty percent (50%) of

the required hours under the direct supervision and responsible charge of a licensed professional who meets the requirements set forth in this rule. Supervised apprenticeship hours may not be used for credit for more than fifty percent (50%) of the required hours in any instruction subcategory (General, Chemical or Physical).

(a). For purposes of this rule, "supervising licensed professional" shall identify a licensed professional in supervision of a student enrolled in an apprenticeship program curriculum, approved by the Board, and responsible for all aspects of that student's apprenticeship instruction.

(b). Any school offering an apprenticeship curriculum shall maintain a record of all hours completed under the apprenticeship program, including classroom hours, for which credit is awarded in a student's academic file. This record shall include the number of hours completed under direct supervision and responsible charge, the dates these hours were earned, the license number of the professional in responsible charge of instruction who directly supervised the student and the signatures of both the student and the supervising licensed professional in responsible charge.

(1) The required records shall be maintained in the student's file and made available for inspection during the student's academic career, shall be maintained for a period of not less than seven (7) years after a student is no longer attending the school providing the apprenticeship curriculum, and shall be made available to the Board immediately upon request during this time.

(2) A daily log accounting for all apprenticeship hours awarded under this chapter by any school offering an apprenticeship curriculum shall be maintained by the school and updated monthly. This log shall be made available for inspection at any time.

(3) The supervising licensed professional shall submit the daily log to the school providing the apprenticeship curriculum no later than the close of business of the first (1st) day of the month for the previous month.

(4) Should an apprentice change salon, shop, establishment, or supervising licensed professional, a notarized transcript of the total hours accumulated shall be signed by the salon, shop, or establishment owner or manager along with the supervising licensed professional and submitted to the approving school within ten (10) days of the change.

(c). Any supervising licensed professional in responsible charge as provided in this rule shall have at least ten (10) years of experience as a licensed professional in the field of study in which the supervision is provided and hold a current, valid Tennessee license issued by the Board in the field in which supervision is provided. The supervising licensed professional's license must be current at all times while providing supervision.

(1) A participating school shall be responsible for confirming a supervising licensed professional's qualifications to be placed in responsible charge of an apprenticeship student as provided by this rule.

(2) The participating school providing hours for supervised apprenticeship credit shall maintain documented proof of a supervising licensed professional's experience and a copy of the

supervising licensed professional's current, valid Tennessee license. This documentation shall be maintained for a minimum of seven (7) years following the date that the supervising licensed professional last provided supervision for that school.

(3) Apprenticeship experience earned in any jurisdiction other than Tennessee may be considered for purposes of complying with this rule provided that the supervising licensed professional was appropriately licensed in that jurisdiction at all times when responsible charge was provided for the purpose of earning credit. Proof of the supervising licensed professional's credentials must be provided by the transferring student candidate.

(4) The owner of the salon, shop, or establishment providing the student an apprenticeship shall provide the school a written acknowledgement accepting the student.

(5) Each supervising licensed professional shall be the responsible charge of no more than one apprenticeship student.

(6) Any salon, shop or establishment participating in an apprenticeship program shall provide a work station for the apprentice student.

(7) The supervising licensed professional must notify the approving school that the apprentice is no longer under his or her supervision within ten (10) days of termination of the apprenticeship and submit a transcript of all hours completed.

(d). No participating school shall allow any person not appropriately licensed to provide any supervision for purposes of this rule, nor shall any participating school allow credit for hours under the supervision of unlicensed persons.

Authority: T.C.A. §§62-4-105(e), 62-4-108, 62-4-110, 62-4-120(k).

0440-01-.04 HIGH SCHOOL EQUIVALENTS.

(1) For the purpose of determining eligibility for enrollment in a school of cosmetology, an applicant must have completed and passed at least two (2) years of high school or obtained a score of at least four hundred and fifty (450) on a General Educational Development test.

(2) Public and vocational schools are exempt from the provisions of Tenn. Code Ann. § 62-4-122. However, the completion of at least ten (10) high school credits or obtaining a score of at least four hundred and fifty (450) on a General Educational Development test must be met prior to the completion of a cosmetology curriculum.

(3) The school considering acceptance of any candidate shall be responsible for verifying and accepting any submitted documentation for high school equivalency.

Authority: T.C.A. §§62-4-105(e) and 62-4-122.

Rule 0440-01-.05 Requirements for Schools is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.05 REQUIREMENTS FOR SCHOOLS.

~~Every school of cosmetology shall:~~ Every school of cosmetology, including any school solely licensed to teach natural hair styling, manicuring, or aesthetics, shall:

(1) Publish readily available and clearly expressed admission policies and requirements;

(2) Provide to prospective students (before enrollment) published materials which explain requirements for licensure as a cosmetologist, manicurist, instructor, shampoo technician, natural hair stylist, or aesthetician in the State of Tennessee; however, if a school is licensed to provide instruction solely in natural hair styling, manicuring or aesthetics, the school shall only be responsible for providing documentation relative to licensure in the field in which the school provides instruction.

(3) Give a receipt to any student from whom money is collected by authorized school personnel; and;

(4) Submit to the office of the Board, on the prescribed form, a monthly progress report on each student enrolled. The monthly reports must be received no later than the tenth (10th) of each month for the previous month's hours of instruction. If reports are not submitted by this date, a penalty set by the Board will be issued for violation of this rule.

(5) Teach a minimum ten percent (10%) of theory hours each week in each curriculum offered in a school. This requirement does not apply to students enrolled in an apprenticeship program authorized by this chapter.

Authority: T.C.A. §§62-4-105(e) and 62-4-122.

Rule 0440-01-.06 Enrollment of Students is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.06 ENROLLMENT OF STUDENTS.

(1) Every licensed school of cosmetology shall maintain documentation of age and education in each student's file which evidences eligibility for enrollment under the terms of Tenn. Code Ann. § 62-4-122(a).

(2) Every enrollment of a student in a school of cosmetology shall be evidenced by a written enrollment agreement which clearly details the rights and obligations of both parties.

(3) The school shall:

(a) furnish to the student an executed copy of the enrollment agreement; and

(b) maintain a copy of the agreement in the student's file.

(4) Every student enrollment agreement shall:

(a) be signed and dated by the student and an authorized representative of the school;

(b) specify the number of clock hours in the course of instruction and an approximate number of weeks or months required for completion;

(c) identify all costs and charges which the student must bear;

(d) indicate any grounds for termination of a student by the school;

(e) state in clear and understandable language the school's refund policy;

(f) list any special conditions or requirements for graduation; and

(g) contain an acknowledgment that the student has read and understands the agreement before making any payment thereunder.

(5) ~~All documentation and enrollment agreements required under this rule shall be available for inspection by members or inspectors of the Board during business hours.~~ All application information, including documentation and enrollment agreements required under this rule, shall be included in the student's file and made available for inspection by members or inspectors of the Board during business hours.

(6) A student shall be actively enrolled in a licensed school in order to participate in an apprenticeship program.

(7) An apprentice program must be completed within 150% of the time allowed for a student to complete a course of study under the school's standard, non-apprenticeship contract agreement.

Authority: T.C.A. §§62-4-105(e), ~~and~~ 62-4-120, and 62-4-122.

Rule 0440-01-.09 Examination Passing Scores and School Attendance Ratio is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.09 EXAMINATION PASSING SCORES AND SCHOOL ATTENDANCE RATIO.

(1) The minimum passing scores on all examinations held by the board shall be seventy percent (70%).

(2) ~~The school a student attends for sixty percent (60%) or the greatest percentage of hours will be the school responsible for the pass/fail ratio.~~ The school a student attends for sixty percent (60%) or the greatest percentage of all hours, including hours obtained through an apprenticeship program, will be the school responsible for the pass/fail ratio.

(3) A student who graduates from a licensed school must pass all examinations no more than three (3) years after passing the initial theory examination. All scores of any passed examinations after that date will be vacated and the graduate must retake and pass the initial theory examination.

(4) Apprenticeship students shall complete instructional hours and pass the initial theory examination prior to initiating apprenticeship activities in a salon, shop, or establishment.

Authority: T.C.A. §§62-4-105(e).

Rule 0440-01-.11 Teacher Training Programs is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.11 TEACHER TRAINING PROGRAMS.

(1) ~~An application for approval of a teacher training program in cosmetology shall include:~~ An application for approval of a teacher training program in cosmetology, aesthetics, manicuring, shampooing or natural hair styling shall include:

(a) a summary of the education and experience of each instructor for the program;

(b) the scheduled dates of the program; and

(c) the proposed curriculum of the program.

(2) The applicant shall demonstrate to the satisfaction of the Board that the teacher training program submitted for approval will:

(a) ~~Contain~~ contain at least sixteen (16) hours of actual instruction;

(b) emphasize teaching methodology for its entire duration;

(c) restrict the size of classes sufficiently to ensure adequate attention to all participants;

(d) proceed for not more than two (2) hours without a break; and

(e) prohibit demonstrations or presentations for commercial purposes in classrooms. Training programs may not sell, take orders, or in any way promote a product.

(3) Promptly after the completion of a teacher training program approved by the Board, the sponsor shall send to the Board a roster showing the names, social security number and I.D. number of the persons who attended the program and the number of hours that such persons completed.

(4) The sponsor shall provide an opportunity for the attendees to evaluate each class and the overall program. The original evaluations shall be forwarded to the office of the Board.

Authority: T.C.A. §§62-4-105(e) and 62-4-114.

Rule 0440-01-.13 Fees is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.13 FEES.

(1) Application/examination

~~(a) Cosmetologist.....set by contractor~~
~~(b) Manicurist.....set by contractor~~
~~(c) Instructor.....set by contractor~~
~~(d) Aesthetician.....set by contractor~~
~~(e) Shampoo Technician.....set by contractor~~
~~(f) Natural Hair Stylist.....set by contractor~~

a) A candidate shall schedule the test needed for a specific license (cosmetologist, manicurist, instructor, aesthetician, shampoo technician, or natural hair stylist) with the Board's designated testing agency and pay an examination fee that will include any fees charged by the designated testing agency.

b) The Board shall set the examination fee through choosing a contractor from a solicitation process pursuant to Tenn. Ann. Code 12-3-501, et seq. and the Comprehensive Rules and Regulations of the Central Procurement Office found at Tenn. Comp. R. & Reg. Chapter 0690-03-01, or any other predecessor rules and laws of the State of Tennessee regarding the procurement of such contracts.

(2) Original License

(a) Cosmetologist.....fifty dollars ($50.00)
(b) Manicurist.....fifty dollars ($50.00)
(c) Instructor.....seventy dollars ($70.00)
(d) Aesthetician.....fifty dollars ($50.00)
(e) Shampoo Technician.....fifty dollars ($50.00)
(f) Natural Hair Stylist.....fifty dollars ($50.00)

(3) Renewal

(a) Cosmetologist.....fifty dollars ($50.00)
(b) Manicurist.....fifty dollars ($50.00)
(c) Instructor.....sixty dollars ($60.00)
(d) Aesthetician.....fifty dollars ($50.00)
(e) Shampoo Technician.....fifty dollars ($50.00)
(f) Natural Hair Stylist.....fifty dollars ($50.00)
(g) ~~Shampoo/Manicurist.....fifty dollars ($50.00)~~
Retired License Reactivation.....fifty dollars ($50.00)

(4) Penalty for late renewal

Cosmetologist, manicurist, instructor, aesthetician, shampoo technician, and natural hair stylist.....twenty-five dollars ($25.00)

(5) Cosmetology, manicure, skin care, natural hair stylist or manicure/skin care shops

(a) Inspection (new shop, relocated shop, shop with change of ownership)

.....fifty dollars ($50.00)

(b) License

new shop.....fifty dollars ($50.00)
relocated shop.....fifty dollars ($50.00)
change of ownership.....fifty dollars ($50.00)

(c) Renewal.....fifty dollars ($50.00)

(d) Penalty for late renewal.....fifty dollars ($50.00)

(e) Change of name only.....ten dollars ($10.00)

(f) Change of ownership due to death of immediate family, no charge, with a copy of the death certificate or obituary.

(6) School

(a) Application/license (new school).....three hundred dollars ($300.00)

(b) License for relocated or change of ownership for a school
..... one hundred seventy-five dollars ($175.00)

(c) Penalty for late monthly report from schools of hours attended by students
..... twenty-five dollars ($25.00)

(7) Replacement or correction of license

(a) Lost, misplaced or mutilated license.....~~ten dollars ($10.00)~~ twenty-five dollars ($25.00)

(b) Change of name by any cosmetologist, aesthetician, manicurist, instructor, shampoo technician, natural hair stylist or shampoo/manicurist.....ten dollars ($10.00)

(c) Certification for licensee.....fifty dollars ($50.00)

1. Fee should be sent with:

(i) written request for certification
(ii) I.D. number

(d) Student certification of hours.....twenty-five dollars ($25.00)

1. Fee should be sent with:

(i) certification request form
(ii) completion/withdrawal form (unless previously submitted)

(8) Surcharge to issue manicurist license to former shampoo/manicurist as in Tenn. Code Ann. § 62-4-131(c).....twenty-five dollars ($25.00)

(9) Reciprocity.....fifty dollars ($50.00)
The fee for application through reciprocity must be received along with the applicant's initial application documents. Any reciprocity application received without this fee shall be incomplete and will not be considered.

(10) In the event that any check, draft or order for the payment of a fee to the Board of Cosmetology and Barber Examiners is returned because of insufficient funds, only cash, certified check or money order will be accepted for the amount due, plus twenty dollars ($20.00) additional fee.

(11) Applications for licensure of a salon are valid for ninety (90) days after approval by the Board. Failure to obtain an approved inspection for operation within the ninety (90) days shall invalidate the application and require a new application and fee.

Authority: T.C.A. §§62-4-105(e), 62-4-110, 62-4-112, 62-4-115, 62-4-118, 62-4-120, and 62-4-131.

Rule 0440-01-.14 Civil Penalties is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.14 CIVIL PENALTIES.

~~(1) The Tennessee State Board of Cosmetology may, in a lawful proceeding with respect to any person licensed or required to be licensed, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for violation of statutes, rules or orders enforceable by the Board in accordance with the following schedule:~~

~~Violation~~	~~Penalty~~
~~Tenn. Code Ann. §62-4-127(b)(1)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(2)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(3)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(4)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(5)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(6)~~	~~$0 -$1000~~

~~Tenn. Code Ann. §62-4-127(b)(7)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(8)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(9)~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-127(b)(10)~~	~~$0 -$1000~~

~~(2) With respect to any person required to be registered in this state as a cosmetologist, manicurist, aesthetician, shampoo technician or natural hair stylist, the Board may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:~~

~~Violation Penalty~~

~~Tenn. Code Ann. §62-4-108~~	~~$0 -$1000~~
~~Tenn. Code Ann. §62-4-118~~	~~$0 - $1000~~
~~Tenn. Code Ann. §62-4-120~~	~~$0 - $1000~~

(1) The Tennessee State Board of Cosmetology and Barber Examiners may, in a lawful proceeding with respect to any person licensed or required to be licensed, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for violation of statutes, rules or orders enforceable by the Board in accordance with the following schedule: Each individual act, and each day of continued violation, may constitute a separate violation. The amount of any civil penalty shall not exceed one thousand dollars ($1,000.00) for each violation.

Violation	Penalty
Tenn. Code Ann. § 62-4-127(b)	$250 - $1,000

(2) ~~(3)~~ In determining the amount of any penalty to be assessed pursuant to this rule, the Board may consider such factors as the following:

(a) willingness of the violation;

(b) repetitions of the violation;

(c) magnitude of the risk or harm caused by the violation; and

(d) extent to which the licensee has sought to compensate any victim(s) of the violation.

(3) ~~(4)~~ Any owner, manager, or cosmetologist requesting an individual, with a shampoo license only, to perform any services other than those listed for shampooing will be subject to a five hundred dollar ($500.00) penalty.

Authority: T.C.A. §§56-1-308 and 62-4-105(e).

Rule 0440-01-.15 Practice by Instructor is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-01-.15. PRACTICE BY INSTRUCTOR.

(1) Continuing Education

(a) ~~In order for a licensed instructor to obtain credit for taking a continuing education course in a state other than the State of Tennessee, with the exception of seminars conducted by the Cosmetology Educators of America, the licensed instructor shall obtain the Board's approval before taking the course by submitting a written request for approval to the Board within thirty (30) days before the licensed instructor intends to take the course. Such written request must include a copy of the course's curriculum.~~ In

order for a licensed instructor to obtain credit for taking a continuing education course in a state other than the State of Tennessee, the licensed instructor shall obtain the Board's approval before taking the course by submitting a written request for approval to the Board within thirty (30) days before the licensed instructor intends to take the course. Such written request must include a copy of the course's curriculum.

(b) ~~A licensed instructor shall submit a request for an extension of time in which to take his or her continuing education in writing to the Board sixty (60) days prior to the expiration date of the instructor's license.~~ A licensed instructor shall submit a request for an extension of time in which to take his or her continuing education in writing to the Board along with proof showing good cause relative to illness or emergency prior to the expiration date of the instructor's license.

(2) An instructor may only practice or teach the discipline in which he or she is licensed.

Authority: T.C.A. §§62-4-105(e), 62-4-108 and 62-4-114(a)(1) and (2)

Chapter 0440-01
Licensing
New Rules

New Rule 0440-01-.16 Schools Providing Limited Instruction is added to Chapter 0440-01, and shall read as follows:

0440-01-.16 SCHOOLS PROVIDING LIMITED INSTRUCTION.

(1) The Board may, at its discretion, issue a license to a school to provide instruction solely in aesthetics, manicuring or natural hair styling. No school with a limited license shall provide services to the public in any area other than those for which it is licensed to provide instruction.

(2) The Board may, at its discretion, grant a waiver to a school licensed to provide instruction only in natural hair styling, manicuring or aesthetics or an applicant for such a limited license from equipment requirements as provided in this chapter. A request for such a waiver must be made in writing by the school, on forms prescribed by the Board, and shall specifically identify the equipment that the school desires to omit and the reasons that the omitted equipment is not necessary for the school's curriculum.

(3) Any salon, shop, or establishment participating in an apprenticeship curriculum must post a sign at its entrance announcing its participation, and must allow customers to elect whether to be serviced by an apprentice student. This sign shall be a minimum dimension of eight (8) by ten (10) inches.

Authority: T.C.A. §§ 62-4-105(e) and 62-4-120.

New Rule 0440-01-.17 Communication with the Board is added to Chapter 0440-01, and shall read as follows:

0440-01-.17 COMMUNICATION WITH THE BOARD.

(1)- Renewals. All cosmetologist, aesthetician, manicurist, natural hair stylist, instructor and shop license renewals shall include the applicant's current address, phone number and if available, email address.

(2) Mailing Address. All cosmetologist, aesthetician, manicurist, natural hair stylist and instructor licensees shall notify the Board in writing within thirty (30) days of any change in mailing address. Electronic notification is acceptable for purposes of this rule.

(3) Responses to Board Requests. All cosmetologist, aesthetician, manicurist, natural hair stylist, instructor and shop licensees shall respond in writing to any communication from the Board requesting a response within the time prescribed by the Board pursuant to the request.

Authority: T.C.A. § 62-4-105(e).

New Rule 0440-01-.18 Expedited Licensing for Military Spouses is added to Chapter 0440-01, and shall read as follows:

0440-01-.18 EXPEDITED LICENSING FOR CERTAIN MILITARY PERSONNEL AND SPOUSES.

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license or certificate under the Tennessee Cosmetology Act of 1986 upon application and payment of all fees required for issuance of a regular license or certificate of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's license or certificate does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including - but not limited to - education, training, or experience, in order to meet the requirements for the license or certificate to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular license or certificate of the same type, which shall allow such person to perform services as if fully licensed or certified for a set period of time that is determined to be sufficient for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full certificate of registration shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full certificate of registration had been issued at that time.

2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full certificate of registration.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full certificate of registration, the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full certificate of registration of the same type.

Authority: T.C.A. §§ 4-3-1304(d), 62-4-105(e).

CHAPTER 0440-2
SANITARY RULES

TABLE OF CONTENTS

0440-02-.01	Definitions
0440-02-.02	Applicability
0440-02-.03	Responsibility for Compliance
0440-02-.04	Posting of Rules and Licenses
0440-02-.05	Inspections
0440-02-.06	Facilities
0440-02-.07	Equipment
0440-02-.08	Attire
0440-02-.09	Laundry Work
0440-02-.10	Animals
0440-02-.11	High Frequency Electric Current
0440-02-.12	Communicable Diseases
0440-02-.13	Sanitation and Disinfection
0440-02-.14	Trash Containers
0440-02-.15	Alcoholic Beverages
0440-02-.16	Skin Peeling and Invasive Procedures
0440-02-.17	Prohibited Hazardous Substances and Use of Products

Rule 0440-02-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-02-.01 DEFINITIONS.

(1) As used in this Chapter, unless the context requires otherwise, the definitions of terms contained in Tenn. Code Ann. § 64-4-102 are applicable. In addition:

(a) "Establishment" means any cosmetology, manicure, skin care or natural hair stylist shop or school of cosmetology;

(b) "Licensee" means any person holding a valid license (issued by the Board) as a cosmetologist, manicurist, aesthetician, shampoo/manicurist, instructor, natural hair stylist or shampoo technician;

(c) "Shampooing" is cleansing of hair and scalp and includes:

1. brushing and combing;

2. rinsing (includes removal of color, permanents, relaxers and conditioners); and

3. conditioning (applying).

(d) "Shop" means a cosmetology shop, manicure shop, skin care shop or natural hair styling shop.

(e) "Unprofessional Conduct" shall include, but not be limited to failure to respond or comply with a board issued request or lawful order.

(f) "Violation" means any breach or failure to abide by the statutes, rules and orders enforceable by the Tennessee State Board of Cosmetology and Barber Examiners and any unprofessional conduct by any individual or entity licensed or required to be licensed under the Tennessee Cosmetology Act.

Authority: T.C.A. §§62-4-102, 62-4-105(e), and 62-4-134.

Rule 0440-02-.04 Posting of Rules and Licenses is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-02-.04 POSTING OF RULES AND LICENSES.

(1) A copy of the cosmetology law (current Tennessee Cosmetology Act) shall be readily available at each shop and school.

~~Licenses shall not be laminated.~~ (2) Every holder of a shop license shall prominently display such license in a clear and conspicuous place at all times.

(3) Every holder of a personal license shall prominently display such license at any location that the licensee practices or teaches.

Authority: T.C.A. §62-4-105(e).

Rule 0440-02-.07 Equipment is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-02-.07 EQUIPMENT.

(1) Every cosmetology shop shall be equipped with at least:

(a) one (1) shampoo bowl with hot and cold running water in work area and chair;
(b) one (1) enclosed storage area for clean towels;
(c) one (1) covered and labeled container for soiled towels;
(d) one (1) covered and labeled trash container maintained in a sanitary condition;
(e) one (1) dry sterilizer, with fumigant, or sanitary compartment;
(f) one (1) wet sterilizer;
(g) one (1) work station (standard size) for each operator;
(h) one (1) ultra violet sanitizer;
(i) one (1) blood spill kit; and
(j) adequate restroom facilities.

All containers for cosmetic products must be properly labeled.

(2) Every skin care shop shall be equipped with at least:

~~(a) one (1) sink which provides hot and cold running water in the work area, excluding the bathroom;~~
~~(b) one (1) magnifying lamp;~~
~~(c) one (1) enclosed storage area for clean towels;~~
~~(d) one (1) covered container for soiled towels;~~
~~(e) one (1) covered trash container maintained in a sanitary condition;~~
~~(f) one (1) reclining facial chair/table;~~
~~(g) one (1) wet sterilizer for the equipment used;~~
~~(h) ultra violet sanitizer;~~
~~(i) one (1) blood spill kit; and~~
~~(j) adequate restroom facilities.~~

(a) one (1) sink which provides hot and cold running water in the work area, excluding the bathroom;
(b) one (1) hands free magnifying lamp;
(c) one (1) enclosed storage area for clean towels;
(d) one (1) covered and labeled container for soiled towels;
(e) one (1) covered and labeled trash container maintained in a sanitary condition;
(f) one (1) reclining facial chair/table;
(g) one (1) wet sterilizer for the equipment used;
(h) one (1) ultra violet sanitizer;
(i) one (1) blood spill kit;

(j) adequate restroom facilities with hot and cold water;
(k) one (1) sharps container for biohazard material removal;
(l) one (1) electric hot towel cabin;
(m) one (1) facial steamer; and
(n) one (1) wax depilatory heater pot with manufacturer's intended commercial use statement.

All containers for cosmetic products must be properly labeled.

(3) Every manicure shop shall be equipped with at least:

(a) one (1) manicure table with stool or chair, per manicurist;
(b) one (1) patron chair;
(c) one (1) wet sterilizer for equipment used;
(d) one (1) ultra violet sanitizer for equipment used;
(e) enclosed storage area(s) for clean towels;
(f) one (1) covered and labeled container for soiled towels;
(g) one (1) covered and labeled trash container maintained in a sanitary condition;
(h) one (1) sink which provides hot and cold running water in the work area, excluding the bathroom;
(i) one (1) finger bowl per table;
(j) one (1) covered container per table for cotton balls and swabs;
(k) one (1) foot bath if pedicures are offered;
(l) one (1) blood spill kit;
(m) adequate restroom facilities; and
(n) sign prominently posted stating that the customer has the right not to have drills used on his or her nails.

All containers for cosmetic products must be properly labeled.

(4) Every natural hair stylist shop shall be equipped with at least:

(a) one (1) shampoo bowl with hot and cold running water in work area and chair;
(b) one (1) enclosed storage area for clean towels;
(c) one (1) covered and labeled container for soiled towels;
(d) one (1) covered and labeled trash container maintained in a sanitary condition;
(e) one (1) dry sterilizer, with fumigant, or sanitary compartment;
(f) one (1) wet sterilizer;
(g) one (1) work station (standard size) for each operator;
(h) one (1) ultra violet sanitizer;
(i) one (1) blood spill kit; and
(j) adequate restroom facilities.

All containers for cosmetic products must be properly labeled.

(5) Every shop shall contain sufficient equipment to enable it to perform all services offered competently and efficiently. All equipment must be in working order.

(6) Residential shops must maintain a separate entrance without requiring passage through any portion of a private residence. Separate restroom facilities must be provided apart from the living quarters.

(7) A cosmetology, skin care, natural hair stylist or manicure shop located in a mobile home or mobile unit will not be approved for a license unless it is placed on a permanent foundation or otherwise rendered immobile.

(8) A cosmetology, skin care, natural hair stylist or manicure shop must have a separate entrance from any other business except in malls, ~~or~~ strip shopping centers, or other commercial property approved by the Board.

Authority: T.C.A. §§62-4-105(e) and 62-4-125.

Rule 0440-02-.08 Attire is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-2-.08 ATTIRE.

(1) Shops. . . . Any licensee actively engaged in the practice of cosmetology, manicuring, natural hair styling, shampooing or aesthetics in a shop must wear:

(a) an identification tag, with file number.

(2) Schools. . . .All students in a school of cosmetology must wear a uniform prescribed by the school. All instructors must wear name tag with identification number.

(3) Apprenticeship Students. . . .All students participating in an apprenticeship program in a licensed school must wear attire prescribed by the school and participating shop collectively. The student must wear a name tag identifying the student as an apprenticeship student and identifying the school under which the student is participating in the apprenticeship program.

Authority: T.C.A. §62-4-105(e).

0440-2-.09 LAUNDRY WORK.

(1) Laundry work may be performed on the premises of an establishment only:

(a) in an area neither frequented by the general public nor used for instruction, rest, or study by students;
(b) with mechanical equipment installed in accordance with applicable codes and standards;
(c) with workable equipment which has hot and cold water; and
(d) when bleach and detergent are used.

Authority: T.C.A. §§62-4-105(e) and 62-4-125.

Rule 0440-02-.10 Animals is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0440-2-.10 ANIMALS.

~~(1) No animals, birds, or fish shall be permitted in any establishment with the exception of animals used to help disabled persons.~~

No animals, birds, or fish shall be permitted in any establishment with the exception of animals used to help disabled persons as prescribed by the Americans with Disabilities Act. If a service animal is kept in the establishment during business hours due to necessity by an owner, manager or employee, the necessity must be justified with documentation provided by the Americans with Disabilities Act and/or any other applicable authority. This documentation must be maintained in the establishment's license file and be available for inspection and verification upon request by a Board member or a Board inspector

Authority: T.C.A. §§62-4-105(e), 62-4-125 and 62-4-125(a).

Authority: T.C.A. §§62-4-105(e), 62-4-125 and 62-4-125(a).
* 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)
Ron R. Gillihan	X				
Nina Coppinger	X				
Bobby Finger				x	
Frank Gambuzza	X				
Yvette Granger				x	
Kelly Barger	X				
Patricia Richmond	X				
Mona Sappenfield	X				
Judy McAllister	X				
Amy Tanksley	X				
Diane Teffeteller	X				
Anita Allen				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Cosmetology and Barber Examiners on August 20, 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: *11/03/14*

Rulemaking Hearing(s) Conducted on: (add more dates). *(01/05/15)*

Date: 8/20/15

Signature: Laura E. Martin

Name of Officer: Laura E. Martin

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 08/20/2015

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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.

RECEIVED 2015 SEP -2 PM 12 SECRETARY OF STATE PUBLICATIONS

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

8/31/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/2/15

Effective on: 12/1/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Architectural and Engineering Examiners
DIVISION:	Regulatory Boards, Commerce and Insurance
SUBJECT:	Fee Decrease for Engineer Intern Application; Language Changes; Practical Experience Requirements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-208, 62-2-203, 62-2-301, 62-2-307, 62-2-402, 62-2-404, 62-2-501–62-2-503, 62-2-904, 62-2-905
EFFECTIVE DATES:	December 14, 2015, through June 30, 2016
FISCAL IMPACT:	Minimal. The agency reports that: this rule has a minimal expected impact on state or local government revenues or expenditures. Although there is a fee decrease for engineer intern applications, the amount of engineer intern applications would not be enough to significantly impact the Board's expected revenues.
STAFF RULE ABSTRACT:	The agency reports that: many of the changes in this rule are cosmetic, such as changing male pronouns to neutral nouns and deleting and changing a few procedural rules regarding examinations that are outdated. There are a few substantive changes. One allows professors to use their teaching experience to count towards their practical experience requirements. Another rule decreases the engineer intern application fee from fifty to fifteen dollars. A third rule changes the qualified based selections rule minimally to prohibit submitting improper information. There are a few other minor language changes, but the substance of the rules have not significantly changed.

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;

Businesses will not have any anticipated costs associated with these rules.

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

There are no projected reporting, recordkeeping, or administrative costs for small businesses associated with these rules.

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

These rules have no projected impact on small businesses or consumers.

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

The rule changes are mainly cosmetic. The more substantive changes help licensees by helping professors obtain licensure and decreasing the engineer intern fee. These rules also decrease registration fees of engineer interns from fifty dollars ($50.00) to fifteen ($15.00). There are no less burdensome, intrusive, or costly methods to achieve the purpose of the rule.

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

There are no known federal or state counterparts to this rule.

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

This rule does not require small businesses to change their operations. Therefore, there is no need for an exemption.

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 significant impact on local governments.

11

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

For Department of State Use Only

Sequence Number: 09-25-15
Rule ID(s): 6030-6034
File Date: 9/15/15
Effective Date: 12/14/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee State Board of Architectural and Engineering Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Ellery Richardson, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee 37243
Phone:	(615) 741-8689
Email:	Ellery.Richardson@tn.gov
Agency/Board/Commission:	Tennessee State Board of Architectural and Engineering Examiners

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

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

Chapter Number	**Chapter Title**
0120-01	Registration Requirements and Procedures
Rule Number	**Rule Title**
0120-01-.06	Applications – Engineer Intern
0120-01-.11	Education and Experience Requirements – Architect
0120-01-.12	Education and Experience Requirements – Landscape Architect
0120-01-.13	Examinations – General
0120-01-.21	Reexamination – Engineer Intern
0120-01-.25	Renewal of Registration
0120-01-.29	Stay of Pending Rule

Chapter Number	**Chapter Title**
0120-02	Rules of Professional Conduct
Rule Number	**Rule Title**
0120-02-.02	Proper Conduct of Practice

0120-02-.03	Service in Areas of Competence
0120-02-.04	Public Statements
0120-02-.06	Acceptance of Work
0120-02-.07	Misconduct

Chapter Number	**Chapter Title**
0120-04	Interior Designers
Rule Number	**Rule Title**
0120-04-.03	Applications
0120-04-.05	Experience Requirements
0120-04-.08	Renewal of Registration
0120-04-.10	Professional Conduct

Chapter Number	**Chapter Title**
0120-05	Continuing Education
Rule Number	**Rule Title**
0120-05-.08	Exemptions
0120-05-.13	Reciprocity

Chapter Number	**Chapter Title**
0120-06	Corporations, Partnerships and Firms
Rule Number	**Rule Title**
0120-06-.03	Disclosure Requirements

Proposed Rules – Redline
Tennessee Board of Architectural and Engineering Examiners

Chapter 0120-01
Registration Requirements and Procedures

Amendments

The Table of Contents is amended by Repealing rules 0120-01-.21 Reexamination – Engineer Intern and 0120-01-.29 Stay of Pending Rule, so that the amended Table of Contents shall read as follows:

0120-01-.01 Definitions
0120-01-.02 Applicability
0120-01-.03 Residency Requirements
0120-01-.04 Applications - General
0120-01-.05 Applications - Engineer
0120-01-.06 Applications - Engineer Intern
0120-01-.07 Applications - Architect
0120-01-.08 Applications - Landscape Architect
0120-01-.09 References
0120-01-.10 Education and Experience Requirements - Engineer
0120-01-.11 Education and Experience Requirements - Architect
0120-01-.12 Education and Experience Requirements - Landscape Architect
0120-01-.13 Examinations - General
0120-01-.14 Examinations - Engineer, Engineer Intern
0120-01-.15 Examinations - Architect
0120-01-.16 Examinations - Landscape Architect
0120-01-.17 Repealed
0120-01-.18 Repealed
0120-01-.19 Repealed
0120-01-.20 Reexamination - Engineer
0120-01-.21 Repealed
0120-01-.22 Reexamination - Architect
0120-01-.23 Reexamination - Landscape Architect
0120-01-.24 Duplicate Certificates of Registration
0120-01-.25 Renewal of Registration
0120-01-.26 Repealed
0120-01-.27 Notification to the Board
0120-01-.28 Military Applications – Spouses – Expedited Registration

Rule 0120-01-.06 Applications – Engineer Intern is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

> An application for certification as an engineer intern shall be accompanied by a nonrefundable fee of fifteen dollars ($15.00). ~~The application and fee must be submitted each time an applicant sits for the required examination.~~ An applicant ~~shall receive a certificate upon passing~~ who has passed the required examination and ~~meeting~~ has met the other legal requirements shall receive a certificate.

Authority: T.C.A. §§ 62-2-203(c), 62-2-402, and 62-2-404.

Rule 0120-01-.11 Education and Experience Requirements – Architect is amended by deleting the text of paragraphs (3), (4), (6), (7), and (8) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) For purposes of evaluating the education and experience of applicants for examination and registration as an architect, the Board will utilize the "Table of Equivalents" contained in Appendix "A" to Circular of Information No. 1, published in July 1983 by the National Council of Architectural Registration Boards (NCARB), except to the extent that such document conflicts with any applicable statute.

(2) Accredited architecture programs. An architecture program which was accredited by the National Architectural Accrediting Board (NAAB) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory. For purposes of this paragraph, a state-supported school of architecture approved by the Tennessee Higher Education Commission is deemed to have an accredited degree curriculum.

~~(3) (a) Nonaccredited architecture programs.For purposes of T.C.A. §§ 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an NAAB accredited program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is~~

~~equivalent to NAAB accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.~~

(3) Non-accredited architecture programs.

(a) For purposes of T.C.A. §§ 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an NAAB accredited program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is equivalent to NAAB accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.

(b) In reviewing a non-accredited architectural curriculum, the Board may approve either an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a NAAB accredited degree or its equivalent.

(c) In reviewing applicants holding degrees from non-accredited architecture programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from NAAB accredited programs, the Board may consider the following factors:

1. Evidence of having obtained the statutory minimum acceptable practical experience in architectural work, and

2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an architect.

(4) For purposes of T.C.A. ~~Tenn. Code Ann.~~ § 62-2-501(3), an approved "architecture-related curriculum" is an architectural engineering or architectural engineering technology curriculum accredited by the Accreditation Board for Engineering and Technology (ABET).

(5) Effective December 1, 1984, an applicant for the required examination for registration as an architect must have completed the Intern-Architect Development Program (IDP) of the NCARB prior to registration.

(6) An applicant for registration by comity shall submit proof acceptable to the board of having obtained the practical experience in architectural work required by T.C.A. ~~Tenn. Code Ann.~~ §§ 62-2-501 and 62-2-502.

(7) In general, "practical experience in architectural work" consists of architectural experience which is supervised by a registered architect and meets the requirements of T.C.A. ~~Tenn. Code Ann~~ § 62-2-503. Architecture teaching with full-time faculty status in a college or university offering an approved architectural curriculum of four (4) years or more may be considered, at the discretion of the Board, as practical experience in architectural work.

(8) The Board shall review a~~A~~pplicants meeting the above requirements ~~shall be reviewed by the Board~~ for determination of eligibility for either the Architect Registration Examination prepared by ~~the National Council of Architectural Registration Boards~~ (NCARB) or for registration by comity.

Authority: T.C.A. §§ 62-2-203(c), 62-2-501, 62-2-502 and 62-2-503.

Rule 0120-01-.12 Education and Experience Requirements – Landscape Architect is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

The education and experience requirements for applicants for registration as a landscape architect shall be those prescribed in T.C.A. §§ 62-2-801, 62-2-802 and 62-2-803. All practical experience requirements must be completed prior to registration. Landscape architecture teaching with full-time faculty status in a

college or university offering an approved landscape architectural curriculum of four (4) years or more may be considered, at the discretion of the Board, as practical experience in landscape architectural work.

Authority: T.C.A. §§ 62-2-203(c), 62-2-801, 62-2-802, and 62-2-803.

Rule 0120-01-.13 Examinations – General is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

~~(1) Failure of an applicant to turn in a paper on every section of an examination for which the applicant is scheduled will result in failure of the entire examination, unless the applicant presents evidence satisfactory to the Board justifying such incompletion.~~

(~~2~~1) If an applicant passes the required examination(s) and is not approved for registration, ~~his~~ the applicant's application will be held pending. Such applicant may request to appear before the full Board at its next scheduled meeting.

(~~3~~2) An applicant's examination results may be invalidated and an applicant may be prohibited from taking the examination for a period of time as determined by the Board for violations of examination policies, procedures, and candidate agreements, including, but not limited to:

(a) ___Communicating with another examinee during administration of the examination;

(b) ___Copying another examinee's answers or permitting another examinee to copy one's answers;

(c) ___Possessing unauthorized devices or materials during the examination;

(d) ___Impersonating an examinee or permitting an impersonator to take the examination on one's behalf;

(e) ___Removing any secured examination materials from the examination room;

(f) ___Unauthorized disclosure of examination questions or content;

(g) ___Failure to cooperate with the Board's or any appropriate examination authority's investigation of examination irregularities;

(h) ___Disruptive or abusive behavior; or

(i) ___Other actions that would compromise the integrity or security of the examination.

(3) Any licensure examination taken and passed in another jurisdiction by the examinee, while the examinee is barred from taking an examination in Tennessee, will not be acceptable for licensure purposes in Tennessee.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-301(a).

Rule 0120-01-.25 Renewal of Registration is amended by deleting the text of paragraphs (1) and (5) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) All certificates of registration issued to engineers, architects and landscape architects are subject to biennial renewal (every two (2) years) in accordance with the provisions of T.C.A.~~Tenn. Code Ann.~~ § 56-1-302(b).

(2) An architect, engineer or landscape architect may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-05-.04.

(3) Fees for biennial renewal of certificates of registration shall be as follows:

Engineer	$140.00
Architect	$140.00
Landscape Architect	$140.00

(4) The penalty fee for late renewal shall be in the amount of ten dollars ($10.00) for each month or fraction of a month which lapses during the six (6)-month late renewal period before payment is tendered.

~~(5) (a) A registered certificate holder (over age 62) may place his their certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew his their certificate by so notifying the Board.~~

(5) Retirement Status.

(a) A registered certificate holder (over age 62) may place the registrant's certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew the registrant's certificate by so notifying the Board.

(b) A registrant holding a retired certificate may refer to ~~himself~~ oneself as an engineer, architect, or landscape architect, including on correspondence and business cards, provided that the word "retired" is used in conjunction with the title. However, a holder of a retired certificate may not engage in or offer to engage in the practice of engineering, architecture or landscape architecture as defined by T.C.A. § 62-2-102. Practice or offer to practice in violation of this subparagraph shall be considered to be misconduct and may subject the registrant to disciplinary action by the Board.

(c) A registrant holding a retired certificate may not engage in any activity constituting the practice or offer to practice of engineering, architecture or landscape architecture in the State of Tennessee without first notifying the Board, in writing, as to a change to "active" status and paying a biennial license renewal fee of one hundred forty dollars ($140.00).

Authority: T.C.A. §§ 62-2-203(c) and (d) and 62-2-307(c).

Chapter 0120-01
Registration Requirements and Procedures

Repeal

Rule 0120-01-.21 Reexamination – Engineer Intern is repealed in its entirety.

~~The "Fundamentals of Engineering" examination is graded as a whole. A candidate for certification as an engineer intern who fails the examination must retake the examination in its entirety.~~

Authority: T.C.A. § 62-2-203(c).

Rule 0120-01-.29 Stay of Pending Rule is repealed in its entirety. This filing repeals the Emergency Rule 0120-01-.29 that stayed Rule 0120-01-.06 [Applications – Engineer Intern]. The Emergency Rule was filed on April 30, 2015, Rule ID 5938, Sequence Number 04-28-15. The amendment to Rule 0120-01-.06 in this filing will now be the effective rule.

Authority: T.C.A. §§ 4-5-208(a)(2) and 62-2-203(c).

Chapter 0120-02
Rules of Professional Conduct

Amendments

Rule 0120-02-.02 Proper Conduct of Practice is amended by deleting the text of paragraphs (2), (4), (5), and (6) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) The registrant shall at all times recognize the primary obligation to protect the safety, health and welfare of the public in the performance of the registrant's professional duties.

(2) If the registrant becomes aware of a decision taken by an employer, client, or contractor, against the registrant's advice, which violates applicable Federal, State or Local Laws, ~~and~~ Regulations, or Codes which may affect adversely ~~the public health or safety~~ the safety, health and welfare of the public, the registrant shall:

(a) Report the decision to the ~~local building inspector or other public official~~ authority having jurisdiction charged with the enforcement of the applicable Federal, State or Local Laws, ~~and~~ Regulations, and Codes;

(b) Refuse to consent to the decision; and

(c) In circumstances where the registrant reasonably believes that other such decisions will be taken notwithstanding the registrant's objections, terminate services with reference to the project.

(3) A registrant possessing knowledge of a violation of T.C.A. Title 62, chapter 2, or this chapter, shall report such knowledge to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as it may require.

(4) The registrant shall maintain the continuing education records required by rule 0120-05-.10 ~~"Records"~~ for a period of four (4) years and shall furnish such records to the Board for audit verification purposes within thirty (30) days of the Board's request.

(5) A registrant possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant and/or the Board by responding appropriately regarding those qualifications when requested to do so. A registrant shall provide timely verification of employment and/or experience earned by an applicant under ~~his or her~~ the registrant's supervision if there is reasonable assurance that the facts to be verified are accurate. A registrant shall not knowingly sign any verification document that contains false or misleading information.

(6) ~~A registrant may not enter into a contract for professional services on any basis other than direct negotiation with any governmental entity that is prohibited by T.C.A. § 12-4-106(a)(2)(A) from making a selection or awarding a contract on the basis of competitive bids, thereby precluding participation in any system requiring a comparison of compensation. Upon selection, a registrant may state compensation to a prospective client in direct negotiation where architectural, engineering, or landscape architectural services necessary to protect the public health, safety, and welfare have been defined.~~ A registrant may not submit any information as part of a proposal for a public project to the state or any of its political subdivisions that would enable the governmental entity to evaluate the proposal on any basis other than the competence and qualifications of the registrant to provide the services required, thereby precluding participation in any system requiring a comparison of compensation. This rule shall apply only to proposals submitted to governmental entities that are prohibited by T.C.A. § 12-4-107(a) from making a selection or awarding a contract on the basis of competitive bids. Upon selection, a registrant may state compensation to a prospective client in direct negotiation where architectural, engineering, or landscape architectural services necessary to protect the public health, safety, and welfare have been defined.

Authority: T.C.A. §§ 62-2-203(c) and (d).

Rule 0120-02-.03 Service in Areas of Competence is amended by deleting the text of paragraphs (1), (2), (3), (4), and (6) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) The registrant shall perform ~~his~~ services only in areas of ~~his~~the registrant's competence. The registrant shall undertake to perform professional assignments only when qualified by education or experience in the specific technical field involved.

(2) The registrant may accept an assignment requiring education or experience outside of ~~his~~ the registrant's own field of competence, but only to the extent that ~~his~~such services are restricted to those phases of the project in which ~~he~~ the registrant is qualified. All other phases of such project shall be performed by qualified associates, consultants or employees.

(3) The registrant shall not affix ~~his~~ the registrant's signature and/or seal to any plan or document dealing with subject matter in which ~~he~~ the registrant lacks competence acquired through education or experience, nor to any plan or document not prepared by ~~him~~ the registrant or under ~~his~~ the registrant's responsibility.

(4) In the event a question as to the competence of a registrant to perform a professional assignment in a specific technical field arises and cannot be otherwise resolved to the satisfaction of the Board of Examiners for Architects and Engineers, the Board, upon request of the registrant or by its own volition, may require ~~him~~ the registrant to submit to whatever examination it deems appropriate.

(5) In providing services, the registrant shall take into account all applicable Federal, State and Local building Laws and Regulations. The registrant shall not knowingly provide services resulting in violation of such laws and regulations.

(6) Incompetence. The following acts or omissions, among others, may be deemed to be "incompetence" pursuant to T.C.A. § 62-2-308(a)(1)(B), and to be cause for denial, suspension or revocation of a certificate of registration to practice architecture, engineering or landscape architecture and/or the imposition of any other lawful discipline:

(a) Malpractice. Incompetence includes, but is not limited to, recklessness, or excessive errors, omissions or building failures in the registrant's record of professional practice.

(b) Disability. Incompetence includes, but is not limited to, mental or physical disability or addiction to alcohol or drugs which leads to the impairment of the registrant's ability to exercise due skill and care in providing professional services so as to endanger the health, safety and welfare of the public.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-308.

Rule 0120-02-.04 Public Statements is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) The registrant shall be completely objective and truthful in all professional reports, statements or testimony. ~~He~~The registrant shall include all relevant and pertinent information in such reports, statements or testimony.

(2) The registrant, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of ~~his~~ the registrant's testimony.

(3) The registrant will issue no statements, criticisms or arguments on professional matters connected with public policy which are inspired or paid for by an interested party or parties, unless ~~he~~ the registrant has prefaced ~~his~~ the registrant's comments by explicitly identifying ~~himself~~ the registrant, by disclosing the identity of the party or parties on whose behalf ~~he~~ the

registrant is speaking, and by revealing the existence of any pecuniary interest ~~he~~ the registrant may have in the instant matter.

Authority: T.C.A. § 62-2-203(c).

Rule 0120-02-.06 Acceptance of Work is amended by deleting the text of paragraphs (2) and (3) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) The registrant shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(2) ~~The registrant shall not falsify or permit misrepresentation of his or his associates' academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates, joint ventures or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work.~~ The registrant shall not falsify or permit misrepresentation of the registrant's or the registrant's associates' academic or professional qualifications to a prospective or existing client or employer. The registrant shall not misrepresent or exaggerate the registrant's degree of responsibility in or for the subject matter of present or prior assignments.

(a) It shall be the responsibility of each registrant to clearly and appropriately state prior professional experience of the registrant and/or the firm the registrant is representing in presenting qualifications to prospective clients, both public and private. If a registrant uses visual representations of prior projects or experience, all registrants whose seal appears on plans, specifications and/or contract documents must be clearly identified.

(b) A registrant who has been an employee of another design firm may not claim unconditional credit for projects contracted for in the name of the previous employer. The registrant shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee. Additionally, the registrant shall provide the time frame in which the project was performed, identify the previous design firm, and describe the nature and extent of the registrant's participation in the project.

(c) A registrant who was formerly a principal in a firm may legitimately make additional claims provided the registrant discloses the nature of ownership in the previous design firm (e.g., stockholder, director or officer) and identifies with specificity the registrant's responsibilities for that project.

(d) A registrant who presents a project that has received awards recognition must comply with the requirements of this rule with regard to project presentation to the public and prospective clients.

(e) Projects which remain unconstructed and which are listed as credit shall be listed as "unbuilt" or by a similar designation.

(3) The registrant shall not request, propose, or accept a professional commission on a contingent basis under circumstances in which ~~his~~ the registrant's professional judgment may be compromised.

Authority: T.C.A. § 62-2-203(c).

Rule 0120-02-.07 Misconduct is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) The registrant shall not knowingly associate with, or permit the use of ~~his or her~~ the registrant's name or firm name in, a business venture by any person or firm which the registrant knows, or

has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(2) The registrant shall not furnish limited services in such a manner as to enable unregistered persons to evade:

(a) Federal, State and Local building laws and regulations, including building permit requirements; or

(b) Registration requirements of T.C.A. Title 62, chapter 2.

(3) The registrant may not take over, review, revise, or sign or seal drawings or revisions thereof when such plans are begun by persons not properly registered and qualified; or do any other act to enable either such persons or the project owners, directly or indirectly, to evade the registration requirements of T.C.A. Title 62, Chapter 2.

(4) The registrant may not make or promise to make contributions of money for the purpose of securing a commission or influencing the engagement or employment of the registrant for a project.

(5) A registrant may be deemed by the Board to be guilty of misconduct in the registrant's professional practice if:

(a) The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;

(b) The registrant's license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or the registrant fails to report such action to the Board in writing within sixty (60) days of the action;

~~(c) The registrant has been delinquent in the payment of the professional privilege tax pursuant to T.C.A. §§ 67-4-1702 – 67-4-1704;~~

(~~d~~c) The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or

(~~e~~d) The registrant fails to comply with a lawful order of the Board.

(6) The registrant may not utilize the seal of another registrant without the other registrant's knowledge and consent.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-308.

Chapter 0120-04
Interior Designers

Amendments

Rule 0120-04-.03 Applications is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Each ~~application~~ applicant for registration as a registered interior designer must be at least twenty-one (21) years old and must not have been convicted of any offense that bears directly on the applicant's fitness to be registered as determined by the Board. The applicant shall indicate ~~his or her~~ the applicant's age and shall give a full explanation of any conviction of any offense on a form provided by the Board.

(2) An application for registration as a registered interior designer under the provisions of T.C.A. § 62-2-904 (registration requiring examination), shall be made on a form prescribed by the Board and shall be accompanied by a nonrefundable fee of fifty-five dollars ($55.00). The applicant shall provide the Board with NCIDQ examination verification or equivalent examination verification by submitting the following to the examination sponsor:

(a) An examination verification form supplied by the Board; and

(b) The fee, if any, charged by the examination sponsor for verification.

Authority: T.C.A. §§ 62-2-203(c), 62-2-301(a), 62-2-904, and 62-2-905.

Rule 0120-04-.05 Experience Requirements is amended by deleting the text of paragraphs (1), (2), (3), and (4) and substituting instead the following language and adding a new paragraph (5) so that, as amended, the rule in its entirely shall read:

(1) Except as provided by T.C.A. § 62-2-905~~,~~ (registration without examination), the experience requirements for an applicant for registration as a registered interior designer shall be those prescribed in T.C.A. § 62-2-904 (registration with examination).

(2) For purposes of T.C.A. § 62-2-904(a), and this rule, "diversified interior design experience" shall mean that the applicant has been engaged in three (3) or more of the following activities of enhancing the function and quality of interior space:

(a) Analysis of a client's needs, goals, and life safety requirements for the interior space of a structure;

(b) Integration of findings with knowledge of interior design;

(c) Formulation of preliminary design concepts that are appropriate, functional and aesthetic;

(d) Development and presentation of final design recommendations through presentation media;

(e) Preparation of working drawings and specifications for non-load bearing interior construction, materials, finishes, space planning, furnishings, fixtures and equipment;

(f) Collaboration with professional services of other licensed practitioners in the technical areas of mechanical, electrical and load-bearing design required for regulatory approval;

(g) Preparation and administration of bids and contract documents as the client's agent; and

(h) Review and evaluation of design solutions during implementation and upon completion.

(3) An applicant shall have worked at least one thousand six hundred (1,600) hours in a calendar year to obtain credit for a year's worth of diversified interior design experience under the provisions of T.C.A. § 62-2-904(a).

(4) Interior design teaching with full-time faculty status in a college or university offering an approved interior design curriculum of four (4) years or more may be considered, at the discretion of the Board, as diversified interior design experience.

(5) Diversified interior design experience shall be demonstrated to the Board by the applicant who shall furnish the following:

(a) An affidavit by the applicant attesting that the applicant has engaged in the practice of interior design for the number of years for which the applicant is claiming experience; and

(b) A minimum of five (5) references, on forms supplied by the Board, certifying that the applicant has provided interior design services for the period of experience claimed by

the applicant. References from relatives will not be considered. No reference will be considered if prepared more than two (2) years prior to the date of application.

(c) Three (3) such references must be registered interior designers and/or registered architects. In addition, one (1) client reference and one (1) employer reference are required. A client reference may be substituted for the employer reference if an applicant is self-employed. An employer reference or a reference from a registered interior designer or registered architect may be substituted for the client reference if the applicant is an interior design educator.

(d) If a reference reply is uncomplimentary, derogatory, or unfavorable of the applicant, the applicant may be required to furnish additional references. If subsequent replies are unfavorable, the applicant will be scheduled for an interview with the Board for further consideration.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-904(a).

Rule 0120-04-.08 Renewal of Registration is amended by deleting the text of paragraphs (1) and (5) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) All certificates of registration issued to a registered interior designer are subject to biennial renewal (every two (2) years) in accordance with the provisions of T.C.A. § 56-1-302(b).

(2) A registered interior designer may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-05-.04.

(3) The fee for biennial renewal of certificates of registration for registered interior designers shall be in the amount of one hundred forty dollars ($140.00).

(4) The penalty for late renewal shall be in the amount of ten dollars ($10.00) for each month or fraction of a month which elapses during the six (6)-month late renewal period before payment is tendered.

~~(5) (a) A registered certificate holder (over age 62) may place his their certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. Such registrant shall renew his their certificate by so notifying the Board.~~

(5) Retirement Status.

(a) A registered certificate holder (over age 62) may place the registrant's certificate, if in good standing, in retirement status during the biennial license renewal cycle by filing a form designated by the Board. No fee shall be required. The registrant shall renew the certificate by so notifying the Board.

(b) A registrant holding a retired certificate may refer to ~~himself~~ oneself as a registered interior designer, including on correspondence and business cards, provided that the word "retired" is used in conjunction with the title. Use of the title in violation of this subparagraph shall be considered to be misconduct and may subject the registrant to disciplinary action by the Board.

(c) A registrant holding a retired certificate may return to "active" status by notifying the Board, in writing, ~~as~~ to ~~a~~ change to "active" status and paying a biennial registration renewal fee of one hundred forty dollars ($140.00).

Authority: T.C.A. §§ 62-2-203(c), (d) and 62-2-307.

Rule 0120-04-.10 Professional Conduct is amended by deleting the text of paragraphs (3), (5), (8), (9), and (11)–(14) in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) The registrant shall comply with all applicable laws, regulations and codes governing the practice of interior design, and the use of the title "registered interior designer."

(2) The registrant shall at all times recognize the primary obligation to protect the health, safety and welfare of the public in the registrant's practice of interior design.

(3) The registrant shall perform ~~his~~ services only in areas of ~~his~~the registrant's competence.

(4) The registrant shall not engage in any form of false or misleading advertising or promotional activities including, but not limited to, implying unregistered staff members or employees of the firm are registered interior designers.

(5) The registrant shall not divulge any confidential information about the client or the client's project, or utilize photographs or specifications of the project without the express permission of the client~~.~~ ~~P~~; provided, however, this provision shall not apply to those specifications, drawings or photographs over which the designer retains proprietary rights or the designer is required by law or in connection with an investigation by the Board to furnish.

(6) The registrant shall be completely objective and truthful in all professional reports, statements and testimony.

(7) The registrant shall not assist or abet improper or illegal conduct of anyone in connection with a project.

(8) When in public service as a member, advisor, or employee of a governmental body or department, the registrant shall not participate in considerations or actions with respect to services provided by ~~him~~ the registrant or ~~his~~ the registrant's organization in private professional practice.

(9) The registrant shall not solicit or accept any contract from a governmental body on which ~~he~~ the registrant, or a principal or officer of ~~his~~ the registrant's organization, serves as a member.

(10) The registrant shall not pay or offer to pay, either directly or indirectly, any commission, political contribution, or gift or other consideration in order to secure work, exclusive of securing salary positions through employment agencies.

(11) ~~The registrant shall not falsify or permit misrepresentation of his or his associate's academic or professional qualifications. The registrant shall not misrepresent or exaggerate registrant's degree of responsibility in or for the present or prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates, or joint ventures, or his or their past accomplishments with the intent and purpose of enhancing the registrant's qualifications and work.~~ The registrant shall not falsify or permit misrepresentation of the registrant's or the registrant's associates' academic or professional qualifications to a prospective or existing client or employer. The registrant shall not misrepresent or exaggerate the registrant's degree of responsibility in or for the subject matter of present or prior assignments.

(a) It shall be the responsibility of each registrant to clearly and appropriately state prior professional experience of the registrant and/or the firm the registrant is representing in presenting qualifications to prospective clients, both public and private.

(b) A registrant who has been an employee of another design firm may not claim unconditional credit for projects contracted for in the name of the previous employer. The registrant shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee. Additionally, the registrant shall provide the time frame in which the project was performed, identify the previous design firm, and describe the nature and extent of the registrant's participation in the project.

(c) A registrant who was formerly a principal in a firm may legitimately make additional claims provided the registrant discloses the nature of ownership in the previous design firm (e.g., stockholder, director or officer) and identifies with specificity the registrant's responsibilities for that project.

(d) A registrant who presents a project that has received awards recognition must comply with the requirements of this rule with regard to project presentation to the public and prospective clients.

(e) Projects which remain unconstructed and which are listed as credit shall be listed as "unbuilt" or by a similar designation.

(12) The registrant shall not request, propose or accept a professional commission on a contingent basis under circumstances in which ~~his~~the registrant's professional judgment may be compromised.

(13) The registrant shall not knowingly associate with, or permit the use of ~~his~~ the registrant's name or firm name in, a business venture by any person or firm which ~~he~~ the registrant knows, or has reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(14) The registrant may be deemed by the board to be guilty of misconduct if:

(a) ~~He~~ The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action;

(b) ~~His~~ The registrant's license or certificate of interior design title is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings in another jurisdiction or ~~he~~ the registrant fails to report such action to the Board in writing within sixty (60) days of the action;

(c) ~~He~~ The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified; or

(c) ~~He~~ The registrant fails to comply with a lawful order of the Board.

(15) The registrant shall not engage, or offer to engage, in the providing of services specified by law to require other licensed professionals, such as the design of mechanical, plumbing, electrical and load-bearing structural systems, except for specification of fixtures and their location within interior spaces.

(16) Before accepting a project, a registrant shall reasonably inform the prospective client of:

(a) The scope and nature of the project;

(b) The professional services relating to the interior design that will be performed and the method of compensation for those performed services; and

(c) All compensation that the registrant will receive in connection with the project. If the registrant accepts the project, the registrant shall not accept any compensation from any person with whom the registrant deals in connection with the project that has not been fully disclosed to the client in writing prior to acceptance of the project.

(17) A registrant possessing knowledge of an applicant's qualifications for registration shall cooperate with the applicant and/or the Board by responding appropriately regarding those qualifications when requested to do so. A registrant shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. A registrant shall not knowingly sign any verification document that contains false or misleading information.

(18) The registrant shall maintain the continuing education records required by rule 0120-05-.10 Records for a period of four (4) years and shall furnish such records to the Board for audit verification purposes within thirty (30) days of the Board's request.

Authority: T.C.A. § 62-2-203(c).

Chapter 0120-05
Continuing Education

Amendments

Rule 0120-05-.08 Exemptions is amended by deleting the text of subparagraphs (1)(b), (1)(c) and (1)(d) in their entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) A registrant may be exempt from continuing education requirements for any of the following reasons:

(a) A new registrant is not required to satisfy the continuing education requirements prescribed in this chapter as a prerequisite for initial registration. However, at the time of first registration renewal, the registrant must demonstrate completion of the required continuing education.

(b) A non-career military registrant serving on active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the ~~Professional Development Hours~~PDH required during that year.

(c) A registrant employed as an architect, engineer, landscape architect or registered interior designer and assigned to duty outside the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the ~~Professional Development Hours~~PDH required during that year.

(d) A registrant who lists ~~his or her~~ the registrant's occupation as "Rretired" or "inactive" on the Board-approved renewal form and who further certifies that ~~he or she is~~ they are no longer practicing shall be exempt from the ~~Professional Development Hours~~PDH required. In the event such a person elects to return to active practice, PDH~~'s~~ must be earned for each year exempt, not to exceed the annual requirement for two (2) years before the person returns to active practice. Inactive or retired registrants returning to active practice must report PDH~~'s~~ earned within no more than two (2) years of the request to reactivate.

Authority: T.C.A. § 62-2-203(d).

Rule 0120-05-.13 Reciprocity is amended by deleting the text of paragraph (1) in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) If a registrant resides in or has ~~his or her~~ principal place of business in a state or territory of the United States, or another country, that has established mandatory continuing education requirements for architects, engineers, landscape architects or interior designers, and that registrant has met the continuing education requirements of ~~his or her~~ the registrant's home jurisdiction and is in good standing in that jurisdiction, then that registrant shall be deemed to have met the continuing education requirements of Tennessee. Documentation that the registrant is in good standing in ~~his or her~~ the registrant's home jurisdiction must be provided at the Board's request. If the registrant is exempt from the continuing education requirements in ~~his or her~~the registrant's home jurisdiction, the registrant must meet the requirements of Tennessee unless ~~he or she~~ the registrant qualifies for an exemption in Tennessee.

(2) This rule shall apply only to the acceptance of professional development hours for continuing education and shall not be construed to apply to the registration by comity of architect, engineer,

landscape architect or interior designer applicants from another state, territory of the United States or country.

Authority: T.C.A. § 62-2-203(d).

Chapter 0120-06
Corporations, Partnerships and Firms

Amendments

Rule 0120-06-.03 Disclosure Requirements is amended by deleting the text of paragraph (2) in its entirety and substituting instead the following language so that, as amended, the rule in its entirety shall read:

(1) Corporations, partnerships and firms offering architectural, engineering and landscape architectural services to the public must comply with the provisions of T.C.A. §§ 62-2-601 and 62-2-602.

(2) An individual registrant practicing in ~~his or her~~the registrant's own name as a sole proprietorship shall not be required to submit a disclosure form.

Authority: T.C.A. § 62-2-203(c).

* 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)
Richard D. Thompson, RA	X				
Robert G. Campbell, Jr., PE	X				
Susan K. Ballard, RID	X				
Wilson Borden	X				
Harold P. Balthrop, Jr., PE	X				
Philip K. S. Lim, PE	X				
Paul W. Lockwood, RLA	X				
Jerome Headley, RA	X				
Frank W. Wagster, RA	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Architectural and Engineering Examiners on April 9, 2015, 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.

MARGARET WILLIAMS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 11-06-2017

Date: 9-2-15

Signature: Ellery

Name of Officer: Ellery Richardson

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 9/2/15

Notary Public Signature: Margaret Williams

My commission expires on: 11/6/17

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

9/9/2015
Date

RECEIVED
2015 SEP 15 PM 12:35
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 9/15/15

Effective on: 12/14/15

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Securities
SUBJECT:	Invest Tennessee Exemption
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 48-1-103(a)(13), 48-1-115, 48-1-116, 48-1-124(e); Public Acts of 2014, Chapter 943; 17 C.F.R. § 230.504(a)(3) and 17 C.F.R. 230.500(f)
EFFECTIVE DATES:	December 16, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule implements T.C.A. § 48-1-103(a)(13), providing details regarding eligibility for and compliance with the new securities registration exemption, the Invest Tennessee Exemption. The Invest Tennessee Exemption permits Tennessee entities to conduct an offering of securities to Tennessee investors of up to one million dollars ($1,000,000) over a twelve (12) month rolling period without being required to register those securities with the Securities Division of the Department of Commerce and Insurance.

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 1

In Section 3(a)(1)(i), insert "deemed to be" after "An issuer shall be ..." to be consistent with the language of 17 C.F.R. Section 230.147.

Agency Response to Comment 1

The Division has included the suggested language in the proposed rule.

Comment 2

Strike Section 4 and replace it with language that is more consistent with the Compliance and Disclosure Interpretations released by the Securities and Exchange Commission ("SEC") on October 2, 2014. The SEC stated that an offeror can advertise an offering on a website and still qualify for an intrastate securities offering exemption if the website has adequate measures in place to ensure that the offers of securities are made only to persons resident in the relevant state. The SEC discussed the use of Internet Protocol ("IP") addresses as a way to track and limit access to a state-only website.

Agency Response to Comment 2

The Division discussed this comment with its IT personnel and is concerned that IP addresses can be easily circumvented and that the proposed language which focuses on the origination of IP addresses would not adequately protect Tennessee investors against fraud. Therefore, the Division declines to adopt the proposed language.

Comment 3

With respect to the established authority set forth at the end of the proposed rule, strike all references to federal regulations, which provide no source of state rulemaking authority.

Agency Response to Comment 3

The State Attorney General's Office has conducted an initial review of the proposed rule and determined that the information provided in the Authority for the proposed rule is appropriate. Therefore, the Division declines to adopt the proposed change.

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

The Department of Commerce and Insurance ("Department") has considered whether the proposed rule in this Rulemaking Hearing Rule will have an economic impact on small businesses (businesses with fifty (50) or fewer employees) and determined that it is not anticipated to have a significant economic impact on small businesses. Chapter 943 of the Public Acts of 2014 authorizes the Commissioner to promulgate rules to implement T.C.A. § 48-1-103(a)(13), known as the Invest Tennessee Exemption, which permits Tennessee entities to offer and sell securities to Tennessee residents without registering those securities with the Department for up to a maximum aggregate offering of one million dollars ($1,000,000) during a twelve (12) month rolling period. These rules clarify the requirements that Tennessee entities' offerings must meet in order to qualify for the Invest Tennessee Exemption from securities registration requirements.

The outcome of the analysis set forth in T.C.A. § 4-5-403 is as follows:

(1) The proposed rule will only apply to Tennessee entities seeking to offer and sell securities pursuant to the Invest Tennessee Exemption.

(2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule is not anticipated to place any substantial burden on any small business engaged in raising capital pursuant to the Invest Tennessee Exemption.

(3) The effect of this proposed rule on small businesses and consumers is negligible. The rule will only affect Tennessee entities that want to raise capital pursuant to the Invest Tennessee Exemption.

(4) There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.

(5) This proposed rule is based on federal securities regulations and is substantially similar to other states' regulations regarding intrastate securities registration exemptions.

(6) The exemption of small businesses from the requirements of this proposed rule would undermine the ability of the Department to protect Tennessee investors from securities fraud.

Impact on Local Governments

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

This rule will not have an impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-30-15
Rule ID(s): 6043
File Date: 09/17/15
Effective Date: 12/16/15

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).

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Securities
Contact Person:	Sarah Branch, Assistant General Counsel for Securities
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-253-4701
Email:	Sarah.Branch@tn.gov

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

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

Chapter Number	**Chapter Title**
0780-04-02	Securities Registration and Exemptions
	Table of Contents
Rule Number	**Rule Title**
0780-04-02-.17	Invest Tennessee Exemption

Department of Commerce and Insurance
Division of Securities

Chapter 0780-04-02
Securities Registration and Exemptions

Amendment

0780-04-02 Securities Registration and Exemptions is amended by adding the following language to the Table of Contents:

0780-04-02-.17 Invest Tennessee Exemption

Authority: T.C.A. §48-1-103(a)(13) and Public Act of 2013, Chapter 943.

Chapter 0780-04-02
Securities Registration and Exemptions

New Rule

0780-04-02-.17 Invest Tennessee Exemption.

(1) Preliminary Notes.

(a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors of all of the facts necessary to ensure that potential investors have knowledge of any and all material information necessary for a reasonable investor to determine the risks associated with the offering and all other material information upon which to base a decision as to whether or not to invest and in compliance with the antifraud provisions of the Act.

(b) In view of the objective of this Rule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any offering which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in the statutory exemption itself or this Rule.

(c) This exemption is not available to an issuer that is in the development stage with either no specific business plan or purpose or has indicated that its business plan or purpose is to engage in a merger or acquisition with an unidentified company or companies or another entity or person.

(d) Nothing in this exemption shall be construed in any way to provide an exemption for offerors or sellers of securities under this exemption from the registration requirements for broker-dealers and broker-dealer agents as set forth in T.C.A. §48-1-109.

(2) Definitions.

(a) "Accredited investor", as defined in 17 C.F.R. §230.501, and as may be amended, means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

1. Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds one million dollars ($1,000,000).

(i) Except as provided in subpart (2)(a)1.(ii) of this Rule, for purposes of calculating net worth under this part (2)(a)1.:

(I) The person's primary residence shall not be included as an asset;

(II) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding sixty (60) days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(ii) Subpart (2)(a)1.(i) will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(I) Such right was held by the person on July 20, 2010;

(II) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(III) The person held securities of the same issuer, other than such right, on July 20, 2010.

2. Any natural person who had an individual income in excess of two hundred thousand dollars ($200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars ($300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

3. Any other entity or organization listed in 17 C.F.R. §230.501, including but not limited to certain banks, savings and loan associations, private development companies, non-profit organizations, and trusts.

(b) "Investment Company" as used in T.C.A. §48-1-103(a)(13)(A)(vi) means any issuer which:

1. is or holds itself out as being engaged primarily, or proposed to engage primarily in the business of investing, reinvesting, or trading in securities;

2. is engaged or proposed to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

3. is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding forty percent (40%) of the value of such issuer's total assets, excluding government securities and cash items, on an unconsolidated basis.

(c) An issuer not "subject to the reporting requirements of Section 13 of the 1934 Act or Section 15(d) of the 1934 Act" as used in T.C.A. §48-1-103(a)(13)(A)(vi) means an issuer that is not required to submit periodic reports to the SEC, such as Forms 10-K, 10-Q, and 8-K, as set forth in Sections 13 and 15(d) of the 1934 Act.

(3) Exemption. By the authority delegated to the commissioner in T.C.A. §§48-1-103(a)(13) and 48-1-116, any issuer who will offer to sell or sell a security in Tennessee and who intends to rely upon the provisions of T.C.A. §48-1-103(a)(13) to exempt such issuer from registering the security with the Division must comply, and bears the burden of proof to establish and document that it complies, with all of the terms and conditions of this Rule 0780-04-02-.17:

(a) Intrastate Offering. The sale of the security shall meet the requirements of T.C.A. §48-1-103(a)(13)(A)(i) and the federal exemption for intrastate offerings in Section 3(a)(11) of the 1933 Act and SEC Rule 147 (17 C.F.R. §230.147), as may be amended, as follows:

1. Issuer. The issuer shall be a resident of and doing business in Tennessee.

(i) An issuer shall be deemed to be a Tennessee resident if it meets any of the following requirements:

(I) If the issuer is a corporation, limited partnership, trust, or other form of business entity organized under state law, it must be incorporated or organized in Tennessee;

(II) If the issuer is a general partnership or other form of business entity not organized under state law, its principal office must be located in Tennessee; or

(III) If the issuer is an individual, the individual's principal residence must be in Tennessee.

(ii) An issuer shall be deemed to be doing business in Tennessee if it meets all of the following requirements:

(I) The issuer derived at least eighty percent (80%) of its gross revenues and those of its subsidiaries on a consolidated basis from the operation of a business or of real property located in or from the rendering of services within Tennessee.

I. For its most recent fiscal year, if the first offer of any part of the issue is made during the first six (6) months of the issuer's current fiscal year; or

II. For the first six (6) months of its current fiscal year or during the twelve (12) month fiscal period ending with such six (6) month period, if the first offer of any part of the issue is made during the last six (6) months of the issuer's current fiscal year from the operation of a business or of real property located in or from the rendering of services within Tennessee; provided, that this provision does not apply to any issuers which have not had gross revenues in excess of five thousand dollars ($5,000) from the sale of products or services or other conduct of its business for its most recent twelve (12) month fiscal period;

(II) The issuer had at the end of its most recent semi-annual fiscal period prior to the first offer of any part of the issue, at least eighty percent (80%) of its assets and those of its subsidiaries on a consolidated basis located within Tennessee;

(III) The issuer intends to use and uses at least eighty percent (80%) of the net proceeds to the issuer from the offering made pursuant to this Invest Tennessee Exemption in connection with the operation of a business or of real property, the purchase of real property located in, or the rendering of services within Tennessee; and

(IV) The issuer's principal office is located in Tennessee.

(iii) The issuer shall not be, either before or as a result of any offering, an investment company as defined in §3 of the Investment Company Act.

(iv) The issuer shall not be, either before or as a result of any offering, subject to the reporting requirements of §13 or §15(d) of the 1934 Act.

2. Investors. Offers and sales of securities exempt under this Rule shall only be made to Tennessee residents. A single offer or sale to an entity or individual who is not a Tennessee resident shall invalidate the use of this exemption for the entire offering. For purposes of determining the residence of offerees and purchasers:

   (i) A corporation, partnership, trust, or other form of business organization shall be deemed to be a Tennessee resident if, at the time of the offer and sale, it has its principal office in Tennessee.

   (ii) An individual shall be deemed to be a Tennessee resident if the individual has, at the time of the offer and sale, his or her principal residence in Tennessee.

   (iii) A corporation, partnership, trust, or other form of business organization which is organized for the specific purpose of acquiring part of an issue offered pursuant to this Rule shall not be deemed to be a Tennessee resident unless all of the beneficial owners of the organization are Tennessee residents.

   Investors shall have the right to cancel investment commitments for any reason until forty-eight (48) hours before the anticipated offering deadline.

3. Offering.

   (i) Every offer and sale pursuant to the Invest Tennessee Exemption offering must meet all of the terms and conditions of this Rule.

   (ii) Integration. Offers and sales that are made twelve (12) months before the start and/or (6) six months following the completion of this exemption offering will be considered a part of the Invest Tennessee Exemption offering for all compliance purposes, including but not limited to the one million dollar ($1,000,000) aggregate limit per twelve (12) month period. If the issuer conducts another offering during either or both of these twelve (12) and six (6) month periods, the issuer shall bear the burden of proof to establish that the offerings are separate and should not be integrated into the exemption offering.

   (iii) The following factors shall be considered in determining whether offers and sales should be integrated for purposes of the Invest Tennessee Exemption:

      (I) Whether the sales are part of a single plan of financing;

      (II) Whether the sales involve issuance of the same class of securities;

      (III) Whether the sales have been made at or about the same time;

      (IV) Whether the same type of consideration is being received; and

      (V) Whether the sales are made for the same general purpose.

4. Limitation on resales. During the period in which securities that are part of an offering pursuant to the Invest Tennessee Exemption are being offered and sold by the issuer, and for a period of nine (9) months from the date of the last sale by the issuer, all resales of any part of the issue, by any person, shall be made only to Tennessee residents.

5. Precautions against interstate offers and sales.

   (i) The issuer shall, in connection with any securities sold by it pursuant to this exemption:

      (I) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act

and the 1933 Act and set forth the limitations on resales contained in part (3)(a)4. of this Rule;

(II) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities or, if the issuer transfers its own securities, make a notation in the appropriate records of the issuer; and

(III) Obtain a written representation from each offeree and purchaser as to such offeree's and purchaser's residence.

(ii) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in part (3)(a)4. of this Rule, take the steps required by subpart (3)(a)5.(i).

(iii) The issuer shall, in connection with any offers or sales by it pursuant to this exemption, disclose in writing the limitations on resale contained in part (3)(a)4. and items (3)(a)5.(i)(I-II).

6. Bank or Depository Institution.

(i) The issuer shall maintain a copy of its escrow agreement with a bank or depository institution authorized to do business in Tennessee in which the issuer will deposit all of the investor funds or cause all of the investor funds to be deposited. The bank or depository institution in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person.

(ii) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement.

(iii) In addition to the forty-eight (48) hour right of cancellation set forth in part (3)(a)2.above, an investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement.

(b) Filing Requirement. Before offering to sell any security, the issuer shall file with the Division a notice on the Notice of Intention to Offer or Sell Securities Pursuant to the Invest Tennessee Exemption Form providing the information set forth in T.C.A. §48-1-103(a)(13)(A)(v). In conjunction with the notice filing requirements set forth in this subparagraph (3)(b), the issuer shall also be required to:

1. File with the Division Form U-2 Uniform Consent to Service of Process;

2. If the issuer is a corporation, file with the Division Form U-2A Uniform Form of Corporate Resolution;

3. Provide the Division with a copy of the fully executed escrow agreement between the issuer and a bank or depository institution authorized to do business in Tennessee in which the issuer states that it will deposit all of the investor funds or cause all of the investor funds to be deposited, the target offering amount to be raised by the offering plus the minimum aggregate amount before escrowed funds may be accessed by the issuer, and the time limit (to be expressed as a date certain) by which the target offering amount must be reached;

4. Provide the Division with a signed acknowledgement requiring the issuer to notify the commissioner immediately upon the issuance of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, or similar order entered or issued by any regulatory authority or by any court, concerning the securities

covered by the notice or other securities offered or sold by the issuer or any order, judgment, decree, or conviction listed in T.C.A. §48-1-103(a)(13)(C)(iii);

5. Provide the Division with a signed statement of whether or not the issuer, an officer, director, partner, or trustee of the issuer, or an individual occupying similar status or performing similar functions for the issuer, or an individual owning ten percent (10%) or more of the outstanding shares of any class or classes of securities issued by the issuer is or has ever been the subject of any order described in subpart (3)(b)4. or any order, judgment, decree, or conviction listed in T.C.A. §48-1-103(a)(13)(C)(iii);

6. Pay the Division a non-refundable filing fee in the amount of one hundred dollars ($100); and

7. Promptly provide any additional information requested by the Division.

(c) Amendment. The issuer shall amend its notice filing required by subparagraph (3)(b) as is necessary to correct any material change relating to the issuer, the persons acting on behalf of the issuer, or the bank or depository institution in which proceeds from the sale of the security will be deposited. No fee shall be charged to amend the notice filing.

(4) Solicitation via the Internet. An issuer shall not use the Internet to offer or sell securities pursuant to this exemption unless access to the issuer's website where the offering of securities pursuant to this exemption may be viewed is only available to Tennessee residents, as defined in this Rule, and the issuer can establish that the offering cannot be viewed by residents of other states. The issuer bears the burden of proof and shall keep documentation to prove that no person or entity that is a resident of a state other than Tennessee has accessed the website regarding this intrastate offering.

Authority: T.C.A. §§48-1-103(a)(13), 48-1-115, 48-1-116, 48-1-124(e), Public Acts of 2014, Chapter 943, 17 C.F.R. §230.500(f), and 17 C.F.R. §230.504(a)(3). Administrative History: Original rule filed _____

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 8/4/15 (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: 02/26/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 04/22/2015

Date: 8/4/15

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 8/4/15

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/16

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

---

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

Herbert H. Slatery III
Attorney General and Reporter

9/2/2015
Date

RECEIVED
2015 SEP 17 PM 2:40
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 09/17/15

Effective on: 12/16/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Pharmacy
DIVISION:	
SUBJECT:	Standards of Practice; Medical and Prescription Orders
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 63-10-204 and 63-10-304
EFFECTIVE DATES:	December 14, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 1140-03-.03(8) is being amended to provide an exception for institutional pharmacies falling under Rule 1140-04-.10 by adding an additional exception for pharmacies *participating in collection or mail-back activities pursuant to* the new DEA rule.

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 was one comment received from the Tennessee Pharmacists Association via a letter addressed to the Board's attorney.

In the letter, the Association commended the Board in its efforts to amend the existing rule but expressed concerns that the language was unclear and limiting. It suggested that the Board restate the language in the affirmative so as to not limit pharmacists, pharmacy interns and pharmacy technicians from taking back only controlled substances as the public interest is better served by their ability to take back all prescription drugs.

Additionally, the Association urged the Board to omit the current reference to 21 CFR §1317.40 as to not limit pharmacists, pharmacy interns and pharmacy technicians to participate in a drug return program conducted within the pharmacy and, rather, use the broad federal citation, 21 CFR §1317, so that pharmacists, pharmacy interns and pharmacy technicians may also work with law enforcement officials in drug take back programs.

The Board amended the rule language accordingly.

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 proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules. In fact, these proposed rule amendments eliminate a current conflict with federal rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

These proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

These proposed rule amendments do not establish flexible compliance and/or reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not contain a schedule or deadline for compliance.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

These proposed rule amendments do not consolidate or simplify compliance or reporting requirements for small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

These proposed rule amendments do not establish performance standards for small business as opposed to design or operation standards required for the proposed rules.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

These rule amendments do not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Pharmacy

Rulemaking hearing date: 01/27/2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   Retail pharmacies and other entities licensed by the Board of Pharmacy that voluntarily choose to participate in the DEA-authorized collection program. Participating entities might bear some costs of complying with the DEA-imposed requirements to participate in the program, but Tennessee is not imposing any additional costs. The DEA, in its final rule, also speculates that pharmacies choosing to participate may derive tangible benefits such as increased retail traffic and public safety and good will.

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:**

   The DEA rules authorizing collection programs do require some additional recordkeeping for entities that choose to participate; Tennessee's proposed rule amendments do not. Therefore, these rule amendments should not affect reporting, recordkeeping or other administrative costs.

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

   The DEA rules may impact small businesses choosing to participate as collectors, but these rule amendments will have no additional impact. Enabling retail pharmacies to participate in collection programs may enhance public safety by disposing of controlled substances that could otherwise be the targets of theft or abuse, and consumers may experience some peace of mind by knowing that they are safely disposing of their medications.

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: 79 Fed. Reg. 53520-53570 (Sept. 9, 2014) (to be codified at 21 C.F.R. pts. 1300, 1301, 1304, 1305, 1307, and 1317) will allow authorized retail pharmacies to voluntarily administer mail-back programs and to maintain collection receptacles.

   State: Other states have adopted similar medication disposal programs and have included pharmacies as collections sites.

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

   These rule amendments do not provide for exemptions of small businesses from all or any part of the requirements contained in the proposed rule.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

12

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

For Department of State Use Only

Sequence Number: 09-27-15
Rule ID(s): 6035
File Date: 9/15/15
Effective Date: 12/14/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Pharmacy
Division:	
Contact Person:	Stefan Cange
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Stefan.Cange@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1140-03	Standards of Practice
Rule Number	**Rule Title**
1140-03-.03	Medical and Prescription Orders

(Rule 1140-03-.01, continued)

7. clinical abuse/misuse.

(b) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem.

(4) Implementation of Pharmaceutical Care.

(a) As a necessary health care provider, pharmacists shall carry out, in addition to the responsibilities in paragraphs (1) through (3) of this rule, those professional acts, professional decisions and professional services necessary to maintain a patient's pharmacy-related care and to implement and accomplish the medical and prescription orders of licensed practitioners, including but not limited to:

1. Developing relationships with licensed practitioners to enable the pharmacist to accomplish comprehensive management of a patient's pharmacy related care and to enhance a patient's wellness, quality of life and optimize outcomes; and

2. Communicating to the health care provider any knowledge of unexpected or adverse response to drug therapy, or resolving unexpected or adverse response; and

3. Having a pharmacist accessible at all times to patients and healthcare providers to respond to their questions and needs.

Authority: *T.C.A. §§63-10-404(19),(22),(23),(26), and (34), 63-10-504(b)(1) and (2), 63-10-504(j), and 63-10-504(c).* ***Administrative History:*** *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.02 LOCATION OF PRACTICE.

A pharmacist may compound and dispense prescription drugs and devices and related materials only in a pharmacy practice site which is duly licensed by the board and which operates in compliance with Tennessee and federal laws and rules governing the practice of pharmacy. The practice of the knowledge skills of pharmacy is not pharmacy practice site dependent. However, any person practicing any aspect of the art and science of pharmacy must be licensed by the board.

Authority: *T.C.A. §§63-10-404(4),(8),(11),(14),(26), and (28), 63-10-504(b)(1) and (2).* ***Administrative History:*** *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.03 MEDICAL AND PRESCRIPTION ORDERS.

(1) To the extent that a medical order contains an order for the compounding, dispensing or administration of a prescription drug or device or related material, the medical order shall be treated as a prescription order. Written medical and prescription orders must be signed by the prescriber. Verbal medical and prescription orders must be immediately reduced to writing (by hand or other means), dated, and initialed by the authorized individual accepting the medical and prescription orders.

(2) Each medical and prescription order when dispensed shall be serially numbered, filed numerically and maintained so as to be readily retrievable at the pharmacy practice site for at least two (2) years from the date the medical and prescription order was last dispensed. Institutional pharmacies shall not be required to serially number medical and prescription orders dispensed for administration to inpatients of that institution.

(Rule 1140-03-.03, continued)

(3) A pharmacist upon initial dispensing of a medical or prescription order shall record on that medical or prescription order: the date such medical or prescription order was dispensed, the pharmacist's initials, and the amount of any product dispensed. If the pharmacist merely initials and dates a medical or prescription order the pharmacist shall be deemed to have dispensed the full face amount of the medical or prescription order.

(4) A pharmacist upon refilling a medical or prescription order shall enter on the back of that medical or prescription order: the date such medical or prescription order was refilled, the pharmacist's initials, and the amount of any product dispensed on such refill. If the pharmacist merely initials and dates the back of the medical or prescription order the pharmacist shall be deemed to have dispensed a refill for the full face amount of the medical or prescription order. As an alternative to recording refill information on the back of medical and prescription orders, an automated data processing system may be used for the storage and retrieval of refill information for medical and prescription orders, subject to the following conditions:

(a) Any such computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of the original medical or prescription order information and the complete refill history of all medical and prescription orders which are currently authorized for refilling. This shall include all the information contained in and required to be entered on each such medical or prescription order. This data must include at least the medical or prescription order serial number; date of issuance of the medical or prescription order; patient's name (and address on controlled substance medical and prescription orders); prescriber's name (and address and DEA registration number on controlled substance medical and prescription orders); product name, strength, dosage form, and quantity prescribed; directions for use, and labeling instructions; refill instructions; and the date of dispensing, quantity dispensed, and identity (name, initials, or identification code) of the dispensing pharmacist for the original dispensing and each refill.

(b) Each individual pharmacist using a computerized system in the refilling of a medical or prescription order shall certify that the information entered into the computer for such a refill is correct by verifying, dating, and signing a hard-copy printout of each day's medical or prescription order refill data, or in lieu of such a printout, by signing a statement in a book or file each day attesting that the refill information entered that day has been reviewed by the pharmacist and is correct as shown. Such documentation shall be separately maintained at the pharmacy practice site for at least two (2) years from the date of the last dispensing.

(c) Any such computerized system shall have the capability of producing a hard-copy printout of any medical or prescription order refill data which the pharmacy practice site is responsible for maintaining under the laws and/or regulations of this state and/or the federal government. (This would, for example, furnish a medical or prescription order-by-medical or prescription order, refill-by-refill audit trail for any specified strength and dosage form of any prescription drug and device, by either brand or generic name or both.) Such a printout must include: the medical or prescription order serial number; patient's name (and address on controlled substance medical and prescription orders); name of prescriber; name, strength, and dosage form of the product; and the date of each refill, quantity dispensed on each refill, and the name or identification code of the dispensing pharmacist. Controlled substance data contained on such a printout must be separated, asterisked, or in some other manner visually identifiable apart from other items appearing on the printout. Any computerized system employed by a pharmacy practice site must, upon the request of an authorized representative of the board, send or provide such a printout to the pharmacy practice site within forty eight (48) hours excluding weekends (Saturdays and Sundays) and legal holidays.

(Rule 1140-03-.03, continued)

(d) In the event that a pharmacy practice site which utilizes such a computerized system experiences system down-time, the pharmacy practice site must have a written or readily retrievable auxiliary policy and procedure which will be used for documentation of refills of all medical and prescription orders. This auxiliary procedure must ensure that each refill is authorized, and that all appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(e) Each pharmacy practice site and pharmacist using such a computerized system must comply with the provisions of paragraphs one (1) and two (2) of this rule. In addition, the requirements of paragraph three (3) of this rule shall apply, unless this initial dispensing data is included on the printout required by subparagraph four (4)(b) of this rule, and is identified as pertaining to the initial dispensing.

(5) A pharmacist may dispense an appropriately authorized refill of a medical or prescription order by referral to a patient profile (medication record) instead of the original medical or prescription order on file at that pharmacy practice site, subject to the following conditions:

(a) The patient profile must contain all the information contained in and required to be entered on the original medical or prescription order, including the complete refill history of that medical or prescription order. This data includes the medical or prescription order serial number; date of issuance of the medical or prescription order; name of patient; name of the prescriber; product name; strength; dosage form, and quantity prescribed; directions for use, and labeling instructions; refill instructions; and the date of dispensing, quantity dispensed, and initials of the dispensing pharmacist for the original dispensing and each refill. Dispensing data must be identified as to whether it pertains to the original dispensing or to a refill.

(b) Controlled substance data contained on the patient profile must be asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the profile.

(c) The patient profile system must contain a complete and accurate record of the refill history of all medical and prescription orders dispensed at the pharmacy practice site. (This record will constitute compliance with the provisions of paragraph four (4) of this rule.)

(d) Each such profile must be maintained so as to be readily retrievable at the pharmacy practice site for at least two (2) years from the date of the last dispensing recorded on the profile.

(e) A pharmacist dispensing a medical or prescription order by referral to a patient profile in so doing certifies as to the accuracy and validity of the information contained on the patient profile.

(f) Each pharmacy practice site and pharmacist using such a patient profile system must comply with the provisions of paragraphs one (1) and two (2) of this rule. In addition, the requirements of paragraph three (3) of this rule shall obtain, unless the patient profile system contains a record of this initial dispensing information for all medical and prescription orders dispensed at the pharmacy practice site.

(6) No pharmacist, or pharmacy intern or pharmacy technician under the supervision of a pharmacist, shall compound or dispense any medical or prescription order except upon the following conditions:

(a) All medical and prescription orders shall be compounded and dispensed in strict conformity with any directions of the prescriber. Nothing in this rule shall prohibit a

(Rule 1140-03-.03, continued)

pharmacist from substituting a therapeutically equivalent prescription drug or device or related material containing the same active ingredient or ingredients, dosage form and strength;

(b) No medical or prescription order shall be refilled if it contains a statement over the signature of the prescriber that it is not to be refilled, and a medical or prescription order shall not be refilled unless so authorized by the prescriber;

(c) If any medical or prescription order contains a statement that it may be refilled a specified number of times within or during any particular period, such order shall be refilled in strict conformity with such statement; and

(d) If a prescription contains a statement that during any particular time it may be refilled at will, the order shall be refilled in strict conformity to dosage directions, with the exception that it may not be refilled after the expiration of the time specified or one (1) year from the date the order was originally issued or dispensed, whichever comes first.

(e) At a rate, based on the actual number of medical and prescription orders compounded and dispensed per hour or per day, that does not pose a danger to the public health, safety or welfare.

(7) Copies of Medical and Prescription Orders.

(a) Copies of medical and prescription orders issued directly to the patient by the pharmacy practice site where the order was originally compounded and dispensed pursuant to the receipt of the order shall bear on the face thereof, in letters red in color and equal in size to those describing the prescription drug or device or related material, the statement: "Copy for Information Only." Presentation of an informational written copy or label of a dispensing container shall be for information purposes only and have no legal status as a valid medical or prescription order. The recipient pharmacist of such copy or label shall contact the prescriber or transferor pharmacy practice site and obtain all information required by this rule, which is the same as obtaining an original medical or prescription order;

(b) Medical and prescription orders shall be transferred between pharmacy practice sites for the purpose of compounding and dispensing provided that the transferee, upon receiving such order directly from the transferor, records the following:

1. The name, address and original medical or prescription order serial number at the pharmacy practice site from which the order was transferred;

2. The name of the transferor; and

3. All information constituting a medical or prescription order including the following:

(i) Date of original dispensing;

(ii) Original number of refills authorized on the original order;

(iii) Date of last dispensing; and

(iv) Number of valid refills remaining.

(c) The transferee informs the patient that the original medical or prescription order has been canceled at the pharmacy practice site from which it was obtained.

(Rule 1140-03-.03, continued)

(d) Computerized systems must satisfy all information requirements.

(e) The transfer of schedule III, IV, V, controlled substances are subject to the conditions set forth in C.F.R. 1306.26.

~~(8) It is unlawful for any pharmacy practice site, pharmacist, or pharmacy intern or pharmacy technician under the supervision of a pharmacist, or any other place of business engaged in compounding and dispensing prescription drugs and devices and related materials for human consumption to receive from any patient or other person the return of any portion of an order that has been taken from the premises of the pharmacy practice site or other place of business, except pursuant to 1140-4-.10.~~

(8) It is permissible for any pharmacy practice site, pharmacist, or pharmacy intern or pharmacy technician under the supervision of a pharmacist, or any other place of business engaged in compounding and dispensing prescription drugs and devices and related materials for human consumption to receive from any patient or other person the return of any portion of an order that has been taken from the premises of the pharmacy practice site or other place of business, only if authorized:

(a) Pursuant to Tennessee Board of Pharmacy rule 1140-04-.10; or

(b) For the purpose of collection for disposal or destruction of any prescription drug; provided that participation in the program shall be voluntary, and such collection and destruction shall be conducted in accordance with the provisions of 21 CFR § 1317.

(9) Medical and prescription orders cannot be accepted, solicited, collected or advertised at a location other than a pharmacy practice site for which a license has been issued by the board, and such pharmacy practice site shall be actively engaged in compounding and dispensing medical and prescription orders.

(10) Medical and prescription orders typed or printed must be signed by the prescriber. Oral medical and prescription orders shall be initialed by the authorized individual accepting the order.

Authority: *T.C.A. §§63-10-404(4),(11),(14),(19),(26),(29),(30), and (34), 63-10-504(b)(1), 63-10-504(j), and 63-10-504(b)(1) and (2).* ***Administrative History:*** *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed November 16, 1992; effective January 8, 1993. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.04 FACSIMILE AND ELECTRONIC MEDICAL AND PRESCRIPTION ORDERS.

(1) Facsimile Orders

(a) The transmission of a facsimile medical or prescription order shall be to a pharmacy practice site of the patient's choice and shall occur only at the option of the patient.

(b) Medical and prescription orders may be transmitted to a pharmacy practice site by a facsimile device. Medical and prescription orders for controlled substances may be transmitted by facsimile devices in compliance with 21 C.F.R. 21306.11, 1306.21 and 1306.31.

(c) A pharmacist may dispense medical and prescription orders transmitted by facsimile devices only when transmitted by an authorized prescriber or the prescriber's designated agent.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Debra Wilson				X	
Jason Kizer, D.Ph	X				
Nina Smothers, D.Ph.	X				
Joyce McDaniel	X				
Will Bunch, D.Ph.	X				
Kevin K. Eidson, Pharm. D.	X				
R. Michael Dickenson, D.Ph.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Pharmacy (board/commission/ other authority) on 01/27/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *11/07/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/27/15 (mm/dd/yy)*

Date: 2-13-15

Signature:

Name of Officer: Stefan Cange

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 2-13-15

Notary Public Signature: Suzanne Mechkowski

My commission expires on:

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 19, 2017
SUMNER COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

9/9/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/15/15

Effective on: 12/14/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 15 PM 3:01
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Professional Counselors, Marital and Family Therapists and Clinical Pastoral Therapists
DIVISION:	Health Related Boards
SUBJECT:	Fee Decrease of Renewal Fee for Certified and Licensed Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 63-22-102, 63-22-104, 63-22-106, 63-22-108, and 63-22-203
EFFECTIVE DATES:	December 10, 2015, through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rule 0450-01-.06 Fees: This rule amendment would decrease the renewal fee for Certified and Licensed Professional Counselors from one hundred ninety dollars ($190) to one hundred fifteen dollars ($115), every two (2) years and eliminate the fee for an endorsement or verification of licensure. Rule 0450-02-.06 Fees: This rule amendment would decrease the renewal fee for Certified and Licensed Marital and Family Therapists from one hundred ninety dollars ($190) to one hundred fifteen dollars ($115), every two (2) years and eliminate the fee for an endorsement or verification of licensure. Rule 0450-03-.06 Fees: This rule amendment would decrease the renewal fee for Clinical Pastoral Therapists from one hundred ninety dollars ($190) to one hundred fifteen dollars ($115), every two years and eliminate the fee for an endorsement or verification of licensure.

Public Hearing Comments

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

There were no public comments received, either written or oral.

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

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ANALYSIS

(1) The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

The proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not impose new compliance or reporting requirements on any entity and to the extent that they change requirements, the burden on small businesses is lessened.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not establish new schedules or deadlines for compliance and/or reporting requirements for any entity including small businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

The rule amendments do not change, consolidate, or simplify compliance or reporting requirements for small businesses, they simply lower the monetary amounts of already existing fee requirements.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

The standards required in the amendments do not necessitate the establishment of performance, design, or operational standards.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation. In fact the rules decrease costs which could stimulate entrepreneurial activity.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board for Professional Counselors, Marital and Family Therapists and Clinical Pastoral Therapists

Rulemaking hearing date: September 5, 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:**

   The proposed rules will affect current licensees of the Board. The proposed rules will reduce existing renewal fee requirements and as such, there are no additional costs to small businesses but a direct benefit to individuals by reducing the fee.

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:**

   None. The proposed rules reduce existing fee requirements and as such, do not require reporting, recordkeeping or other administrative costs in order to comply with the proposed rule.

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

   The proposed rules have a small positive impact on licensed individuals and small businesses by reducing fee requirements to remain licensed and have the license verified to a third party. The rules have no direct impact on consumers.

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:**

   Decreasing fees is the best method for achieving the purpose of decreasing unnecessary Board revenue and the decrease is not burdensome, intrusive, or costly.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: The Board is not aware of any federal counterparts. Counselors are not regulated by the federal government.

   State: After reviewing the rules for other states in the southeastern region of the United States, it has been determined that other states have fees that are consistent with the proposed fees – ranging from $100 to $300 every two years.

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

   An exemption of small businesses is not applicable as the proposed rules reduce existing fees and as such, provide a direct benefit to small businesses.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 09-17-15
Rule ID(s): 6021-6023
File Date: 9/11/15
Effective Date: 12/10/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Board for Professional Counselors, Marital and Family Therapists and Clinical Pastoral Therapists
Division:	Health Related Boards
Contact Person:	Todd Pinckley, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Todd.Pinckley@tn.gov

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

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

Chapter Number	**Chapter Title**
0450-01	General Rules Governing Professional Counselors
Rule Number	**Rule Title**
0450-01-.06	Fees

Chapter Number	**Chapter Title**
0450-02	General Rules Governing Marital and Family Therapists
Rule Number	**Rule Title**
0450-02-.06	Fees

Chapter Number	**Chapter Title**
0450-03	General Rules Governing Clinical Pastoral Therapists
Rule Number	**Rule Title**
0450-03-.06	Fees

(Rule 0450-01-.05, continued)

(c) If an applicant is granted a temporary license, the license shall remain valid until the Board grants or denies the regular license application or until it shall become invalid for any of the following reasons:

1. Expiration of the three (3) year period.

2. Failure to continue in supervision during the three year period the license may be valid.

3. Change of supervisors without notifying the Board, submitting the credentials of the proposed supervisor, and obtaining the Board's approval.

(d) When a temporary license holder is notified by the Board that his temporary license is invalid for any reason, the applicant shall return the temporary license to the Board office within ten (10) days. The applicant is expected to cause his supervisor to notify the Board of any reason he is aware of that the license should become invalid. The Board will notify the supervisor when the temporary license becomes invalid.

(e) To replace the temporary license with a regular license for LPC/MSHP, the applicant shall:

1. Notify the Board in writing of intention to seek licensure, using the form provided by the Board.

2. Present proof of the following:

i. Completion of the required Post Master's supervised experience in a clinical setting which meets the requirement of 0450-01-.10; and

ii. Passage of the National Clinical Mental Health Counseling Examination and the Tennessee Jurisprudence Examination.

3. Upon receipt of the materials specified in Parts 1 and 2 the Board shall consider the previously submitted licensure application appropriately supplemented and grant or deny the regular license application, based on satisfactory completion of all requirements for licensure.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-110, 63-22-116, 63-22-117, 63-22-120, 63-22-121, and 63-22-150.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed April 16, 1996; effective June 30, 1996. Amendment filed June 18, 1996; effective September 4, 1996. Amendment filed January 29, 1998; effective April 14, 1998. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed October 30, 2002; effective January 13, 2003. Amendment filed July 16, 2003; effective September 29, 2003. Amendment filed September 4, 2003 was effective November 18, 2003. However; stay of effective date filed by the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists on November 7, 2003; new effective date January 17, 2004. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed November 26, 2008; effective February 9, 2009. Amendments filed January 7, 2014; effective April 7, 2014.*

0450-01-.06 FEES.

(1) The fees authorized by statutes are established as follows:

(Rule 0450-01-.06, continued)

(a) Application fee - A nonrefundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(b) Duplicate Certificate or License Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license.

(c) Endorsement/Verification Fee - A nonrefundable fee paid for each certification, verification, endorsement of an individual's record for any purpose.

(d) Late Renewal Fee - A nonrefundable fee to be paid when an individual fails to timely renew his certificate or license.

(e) License Fee - A nonrefundable fee to be paid prior to the issuance of the "artistically designed" license.

(f) Renewal fee - A nonrefundable fee to be paid by all license and certificate holders. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.

(g) State Regulatory Fee - To be paid by all individuals at the time of application and with each renewal application.

(h) Temporary License Fee – A refundable fee to be paid by all applicants seeking temporary licensure as a professional counselor.

(i) Upgrade Review Fee - A nonrefundable fee to be paid by an individual seeking to upgrade from certification to licensure status. It must be paid each time a request for upgrade is filed.

(2) All fees shall be established by the board. Fees may be reviewed and changed at the discretion of the board.

(3) All fees must be submitted to the board administrative office by certified or personal check or money order. Checks or money orders are to be made payable to the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists.

(4) Fee Schedule:

	Amount
(a) Certified Professional Counselor	
1. Replacement Certificate	$ 25.00
~~2. Endorsement/Verification~~	~~20.00~~
2.~~3.~~ Late Renewal	75.00
~~4. Renewal (Biennial)~~	~~190.00~~
3. Renewal (Biennial)	115.00
4.~~5.~~ State Regulatory (Biennial)	10.00
5.~~6.~~ Upgrade Review	50.00
(b) Certified Associate Counselor	

(Rule 0450-01-.06, continued)

1. Upgrade Review $50.00

(c) Licensed Professional Counselor
(with or without Mental Health Service Provider)

1. Application $200.00

2. Replacement License 25.00

~~3. Endorsement/Verification 20.00~~

3.~~4.~~ Late Renewal 75.00

~~5. Renewal (Biennial) 190.00~~

4. Renewal (Biennial) 115.00

5.~~6.~~ State Regulatory (Biennial) 10.00

6.~~7.~~ Temporary License 150.00

(d) Mental Health Service Provider Upgrade

1. Application $75.00

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, and 63-22-121.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed April 16, 1996; effective June 30, 1996. Amendment filed January 29, 1998; effective April 14, 1998. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed July 16, 2003; effective September 29, 2003. Amendment filed March 23, 2007, effective June 6, 2007.*

0450-01-.07 APPLICATION REVIEW, APPROVAL, DENIAL, INTERVIEWS.

(1) An application shall be requested from the Board's administrative office or shall be downloaded from the Internet. The submitted application shall be accompanied by the nonrefundable application fee pursuant to rule 0450-01-.06.

(2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will ordinarily be processed at the next board meeting scheduled for the purpose of reviewing files.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the board's administrator. Initial approval or denial must then be made by at least one member of the board or its designated consultant after review by that person. Any such initial approval or denial must be ratified or reversed by the board.

(4) If an application is incomplete when received in the Board's administrative office, a deficiency letter will be sent to the applicant notifying him/her of the deficiency. The requested information must be received in the Board's administrative office before a licensure decision will be made. Under no circumstances shall licensure be granted to any applicant whose application the board has determined to be incomplete.

(5) If a completed application has been denied and ratified as such by the board, the action shall become final and a notification of the denial shall be sent by the board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as

(Rule 0450-02-.05, continued)
Amendment filed April 30, 2002; effective July 14, 2002. Amendment filed July 16, 2003; effective September 29, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0450-02-.06 FEES.

(1) The fees authorized by statutes are established as follows:

(a) Application fee - A nonrefundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(b) Replacement Certification or License Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license or certification.

(c) Endorsement/Verification - A nonrefundable fee paid for each certification, verification, or endorsement of an individual's record for any purpose.

(d) Late Renewal Fee - A nonrefundable fee to be paid when an individual fails to timely renew a certificate or license.

(e) License Fee - A nonrefundable fee to be paid prior to the issuance of the "artistically designed" license.

(f) Renewal fee - A nonrefundable fee to be paid by all license and certificate holders. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.

(g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(h) Temporary License Fee – A refundable fee to be paid by all applicants seeking temporary licensure as a marital and family therapist.

(i) Upgrade review fee - A nonrefundable fee to be paid by all applicants seeking to upgrade from certification to licensure status. It must be paid each time a request for upgrade is submitted.

(2) All fees shall be established by the board. Fees may be reviewed and changed at the discretion of the board.

(3) All fees must be submitted to the board administrative office by certified or personal check or postal money order. Checks or money orders are to be made payable to the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists.

(4) Fee Schedule: Amount

(a) Certified Marital and Family Therapist

1.	Replacement Certification	$ 25.00
~~2.~~	~~Endorsement/Verification~~	~~20.00~~
2.~~3.~~	Late Renewal	75.00
~~4.~~	~~Renewal (Biennial)~~	~~190.00~~

(Rule 0450-02-.06, continued)

3.	Renewal (Biennial)	115.00
4.~~5.~~	State Regulatory (Biennial)	10.00
5.~~6.~~	Upgrade Review	50.00

(b) Licensed Marital and Family Therapist

1.	Application and Oral Examination	$200.00
2.	Replacement License	25.00
~~3.~~	~~Endorsement/Verification~~	~~20.00~~
3.~~4.~~	Late Renewal	75.00
~~5.~~	~~Renewal (Biennial)~~	~~190.00~~
4.	Renewal (Biennial)	115.00
5.~~6.~~	State Regulatory (Biennial)	10.00
6.~~7.~~	Temporary License	150.00

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-106, and 63-22-121.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Amendment filed August 20, 1996; effective November 2, 1996. Amendment filed December 7, 1998; effective February 20, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed July 16, 2003; effective September 29, 2003. Amendment filed October 6, 2004; effective December 20, 2004. Amendment filed March 23, 2007; effective June 6, 2007.*

0450-02-.07 APPLICATION REVIEW, APPROVAL, DENIAL, INTERVIEWS.

(1) An application shall be requested from the Board's administrative office or shall be downloaded from the Internet. The submitted application shall be accompanied by the nonrefundable application fee pursuant to rule 0450-02-.06.

(2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will ordinarily be processed at the next board meeting scheduled for the purpose of reviewing files.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the board's administrator. Initial approval or denial must then be made by at least one member of the board or its designated consultant after review by that person. Any such initial approval or denial must be ratified or reversed by the board.

(4) If an application is incomplete when received in the Board's administrative office, a deficiency letter will be sent to the applicant notifying him/her of the deficiency. The requested information must be received in the Board's administrative office before a licensure decision will be made. Under no circumstances shall licensure be granted to any applicant whose application the Board has determined to be incomplete.

(5) If a completed application has been denied and ratified as such by the board, the action shall become final and the following shall occur:

(Rule 0450-03-.05, continued)

abuse counselor, or an applicant must submit a copy of his renewal certificate.

(iii) An applicant must submit documentation that he has been actively engaged in the practice of clinical pastoral therapy for at least five (5) years prior to January 1, 2003. Such documentation shall include two (2) affidavits signed by certified mental health professionals, attesting to the applicant's period of service as a clinical pastoral therapist or pastoral counselor.

(f) An applicant shall submit evidence of good moral character. Such evidence shall include at least two original letters within the preceding 12 months from professionals attesting to the applicant's personal character and professional ethics. The letters must be submitted on the signator's letterhead.

(g) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.

2. The denial of certification application by any other state or the discipline of certification in any state.

3. Loss or restriction of certification and/or licensure.

4. Any civil suit judgment or civil settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under any country's or state's statutory, common, or case law.

(h) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(i) When necessary, all documents required to be submitted shall be translated into English and such translation certified along with the original document as to authenticity by the issuing source.

(j) Personal resumes are not acceptable and will not be reviewed.

(k) Application review and licensure decisions shall be governed by Rule 0450-03-.07.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-110, 63-22-201, 63-22-202, 63-22-203, 63-22-205, and 63-22-206.* ***Administrative History:*** *Original rule filed December 30,1998; effective March 15, 1999. Amendment filed July 21, 2004; effective October 4, 2004. Amendment filed March 17, 2006; effective May 31, 2006.*

0450-03-.06 FEES.

(1) The fees authorized by statutes are established as nonrefundable as follows:

(a) Application Fee - a fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(Rule 0450-03-.06, continued)

(b) Duplicate License Fee - a fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" License.

(c) Endorsement/Verification Fee - a fee paid for each certification, verification, endorsement of an individual's record for any purpose.

(d) Late Renewal Fee - a fee to be paid when an individual fails to timely renew his certificate.

(e) Renewal Fee - a fee to be paid by all licensees. This fee also applies to individuals who reactivate a retired or lapsed license.

(f) State Regulatory Fee - to be paid by all individuals at the time of application and with each renewal application.

(2) All fees shall be established by the Board.

(3) All fees must be submitted to the Board's Administrative Office by certified or personal check or money order. Checks or money orders are to be made payable to the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists.

(4) Fee Schedule:

		Amount
(a)	Application	$200.00
(b)	Duplicate License	25.00
~~(c)~~	~~Endorsement/Verification~~	~~20.00~~
(c)~~(d)~~	Late Renewal	75.00
~~(e)~~	~~Renewal (Biennial)~~	~~190.00~~
(d)	Renewal (Biennial)	115.00
(e)~~(f)~~	State Regulatory (Biennial)	10.00
(f)~~(g)~~	Examination	250.00

Authority: *T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-1-106, 63-1-107, 63-1-108, 63-1-112, 63-1-118, 63-22-102, 63-22-108, 63-22-203, 63-22-205, and 63-22-207.* ***Administrative History:*** *Original rule filed December 30, 1998; effective March 15, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed July 21, 2004; effective October 4, 2004.*

0450-03-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

(1) An application shall be requested from the Board's administrative office or shall be downloaded from the Internet. The submitted application shall be accompanied by the nonrefundable application fee pursuant to rule 0450-03-.06.

(2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will ordinarily be processed at the next board meeting scheduled for the purpose of reviewing files

* 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)
Susan Hammonds-White, EdD	x				
Janet Scott, PhD	x				
Bradley Bull, PhD	x				
Vacant					
Stephen Caldwell	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board for Professional Counselors, Marital and Family Therapists and Clinical Pastoral Therapists (board/commission/ other authority) on 09/05/2014 (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: *07/10/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/05/14 (mm/dd/yy)*

Date: 9/1/15

Signature:

Name of Officer: Todd Pinckley

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on:

Notary Public Signature:

My commission expires on:

SUZANNE MLCHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 19, 2013

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

Herbert H. Slatery III
Attorney General and Reporter

9/3/2015
Date

RECEIVED
2015 SEP 11 AM 10: 56
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 9/11/15

Effective on: 12/10/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Social Worker Licensure
DIVISION:	Health Related Boards
SUBJECT:	Fee Decrease for Licensees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 9-4-5117, 63-23-106, and 63-23-110
EFFECTIVE DATES:	December 22, 2015, through June 30, 2016
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	Rule 1365-01-.05 Fees: This rule amendment decreases the renewal fee for Licensed Baccalaureate Social Workers from seventy dollars ($70.00) to forty-five dollars ($45.00) every two years and reduces the renewal fee for Licensed Master, Advanced Practice, and Clinical Social Workers from one hundred twenty dollars ($120) to ninety-five dollars ($95.00) every two years. It also eliminates the fee for an endorsement or verification of licensure.

Public Hearing Comments

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

There were no public comments, either written or oral.

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

(1) The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

The proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not impose new compliance or reporting requirements on any entity and to the extent that they change requirements, the burden on small businesses is lessened.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not establish new schedules or deadlines for compliance and/or reporting requirements for any entity including small businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

The rule amendments do not change, consolidate, or simplify compliance or reporting requirements for small businesses, they simply lower the monetary amounts of already existing fee requirements.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

The standards required in the amendments do not necessitate the establishment of performance, design, or operational standards.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation. In fact the rules decrease costs which could stimulate entrepreneurial activity.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Social Worker Licensure

Rulemaking hearing date: 02/05/2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   The proposed rules reduce existing renewal fee requirements and as such, there are no additional costs to small businesses but a direct benefit to individuals by reducing the fee.

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:**

   None. The proposed rules reduce existing fee requirements and as such, do not require reporting, recordkeeping or other administrative costs in order to comply with the proposed rule.

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

   The proposed rules have a small positive impact on licensed individuals and small businesses by reducing fee requirements to remain licensed and have the license verified to a third party. The rules have no direct impact on consumers.

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:**

   Decreasing fees is the best method for achieving the purpose of decreasing unnecessary Board revenue and the decrease is not burdensome, intrusive, or costly.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: The Board is not aware of any federal counterparts. Counselors are not regulated by the federal government.

   State: After reviewing the rules for other states in the southeastern region of the United States, it has been determined that other states have fees that are consistent with the proposed fees – ranging from $100 to $300 every two years.

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

   An exemption of small businesses is not applicable as the proposed rules reduce existing fees and as such, provide a direct benefit to small businesses.

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

4

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

For Department of State Use Only

Sequence Number: 09-39-15
Rule ID(s): 6051
File Date: 9/23/15
Effective Date: 12/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Board of Social Worker Licensure
Division:	Health Related Boards
Contact Person:	Todd Pinckley, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Todd.Pinckley@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1365-01	General Rules and Regulations
Rule Number	**Rule Title**
1365-01-.05	Fees

RULES
OF
~~TENNESSEE BOARD OF SOCIAL WORKER CERTIFICATION AND LICENSURE~~
BOARD OF SOCIAL WORKER LICENSURE

Formatted: Normal

Formatted: Font: (Default) Times New Roman

CHAPTER 1365-01
GENERAL RULES AND REGULATIONS

TABLE OF CONTENTS

1365-01-.01 Definitions
1365-01-.02 Necessity of License
1365-01-.03 Use of Titles
1365-01-.04 Licensure Requirements
1365-01-.05 Fees
1365-01-.06 Application Review, Approval, Denial
1365-01-.07 Renewal, Reinstatement and Retirement
1365-01-.08 Supervision
1365-01-.09 Continuing Education
1365-01-.10 Standards of Conduct
1365-01-.11 Clinical Experience
1365-01-.12 Disciplinary Actions and Civil Penalties
1365-01-.13 Replacement License
1365-01-.14 Change of Address and/or Name
1365-01-.15 Consumer Right-to-Know Requirements
1365-01-.16 Professional Peer Assistance
1365-01-.17 Free Health Clinic and Volunteer Practice Requirements
1365-01-.18 Repealed
1365-01-.19 Repealed
1365-01-.20 Repealed
1365-01-.21 Repealed
1365-01-.22 Repealed
1365-01-.23 Repealed

1365-01-.05 FEES.

(1) Baccalaureate Social Worker.

(a) Application fee.....$50.00

(b) License fee.....$50.00

(c) Endorsement/Verification fee.....$20.00

(d) Renewal fee (biennial).....$45~~70~~.00

(e) Late renewal fee.....$50.00

(f) State regulatory fee (biennial).....$10.00

(g) Temporary License fee.....$50.00

(h) Replacement license fee.....$25.00

(2) Master's Social Worker

(a) Application fee.....$75.00

(b) License fee.....$75.00

(c) Endorsement/Verification fee.....$20.00

(d) Renewal fee (biennial).....$95~~120~~.00

(e) Late renewal fee.....$100.00

(Rule 1365-01-.23, continued)

(f) State regulatory fee (biennial) $10.00

(g) Temporary license fee $50.00

(h) Replacement license fee $25.00

(3) Advanced Practice Social Worker and Clinical Social Worker.

(a) Application fee $100.00

(b) License fee $125.00

(c) Endorsement/Verification fee $20.00

(d) Renewal fee (biennial) ..... $95~~120~~.00

(e) Late renewal fee $100.00

(f) State regulatory fee (biennial) $10.00

(g) Replacement license fee $25.00

(4) An applicant or a licensee may pay all applicable fees in person, by mail or electronically by cash, check, money order or by credit or debit cards accepted by the Department. If the fees are paid by certified, personal, or corporate check, it must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Social Worker Licensure. All fees are nonrefundable with the exception of the license fee. In order to receive a refund, the applicant must submit a written request no later than sixty (60) days after the licensure application was denied or withdrawn.

Authority: *T.C.A. §§~~4-3-1011,~~ 4-5-202, 4-5-204, ~~9-4-5117,~~ 63-1-106, ~~63-23-101,~~ 63-23-102, 63-23-103, 63-23-104, 63-23-105, 63-23-106, ~~63-23-108,~~ 63-23-110 ~~and Chapter 1016 of the Public Acts of 2008, §1~~.* ***Administrative History:*** *Original rule filed September 15, 1987; effective October 30, 1987. Repeal and new rule filed April 6, 1994; effective June 20, 1994. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 9, 2001; effective May 23, 2001. Amendment filed February 1, 2002; effective April 17, 2002. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed November 4, 2002; effective January 18, 2003. Amendment filed July 22, 2003; effective October 5, 2003. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed July 3, 2007; effective September 16, 2007. Emergency rule filed February 2, 2010; effective through August 1, 2010. Amendment repealing and replacing rule was filed April 30, 2010; effective July 29, 2010.*

* 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)
Barrett Michelle Horton				X	
Tara L. Watson	X				
Teresa C. Housteau	X				
Adrienne L. Newman	X				
Julia Axley	X				
Kenya S. Anderson				X	
Vicki Gardine Williams	X				
Amy Gasser-Smith	X				
Karen Armstrong	X				
Ann-Marie Jones	X				
Robert Zylstra				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Social Worker Licensure (board/commission/ other authority) on 02/05/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *11/14/14(mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/05/15 (mm/dd/yy)*

Date: 9/9/15

Signature:

Name of Officer: Todd Pinckley

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 9-9-15

Notary Public Signature: Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/23/15

Effective on: 12/22/15

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2015 SEP 23 PM 3:58
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board for Licensing Health Care Facilities
SUBJECT:	Standards for Prescribed Child Care Centers; Nursing Homes; Residential Hospices; Homecare Organizations Providing Home Health, Hospice, and Professional Support Services; and HIV Supportive Living Centers
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 68-11-202 and 68-11-209
EFFECTIVE DATES:	December 14, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Amendment to Rule Chapter 1200-08-26-.01 Standards for Homecare Organizations Providing Home Health Services, Definitions: This amendment provides for definitions of "speech language pathologist," in place of "speech therapist" as well as "clinical fellow" to more closely mirror the language from the rules for the Board of Communications Disorders and Sciences. Amendment to Rule Chapter 1200-08-26-.06(6) Standards for Homecare Organizations Providing Home Health Services, Basic Agency Functions: This amendment allows clinical fellows to provide speech therapy services within home health settings. The same language has been added to the following rules chapters: 1200-08-02 (Standards for Prescribed Child Care Centers), 1200-08-06 (Standards for Nursing Homes), 1200-08-15 (Standards for Residential Hospices), 1200-08-27 (Standards for Homecare Organizations Providing Hospice Services), 1200-08-28 (Standards for HIV Supportive Living Centers), and 1200-08-34 (Standards for Homecare Organizations Providing Professional Support Services).

Public Hearing Comments

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

There were no comments, either written or oral.

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

REGULATORY FLEXIBILITY ANALYSIS

(1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

(2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules exhibit clarity, conciseness, and lack of ambiguity.

(3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not create flexible compliance and/or reporting requirements for small businesses.

(4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not involve schedules or deadlines for compliance or reporting requirements for small businesses.

(5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not consolidate or simplify compliance reporting requirements for small businesses.

(6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance, design, or operational standards.

(7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

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

Rulemaking hearing date: January 21, 2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   These proposed rules will affect those engaged in the practice of speech therapy or providing speech therapy services. Currently, the following facilities offer speech therapy services: hospice centers 59, centers offering professional support services 129, nursing homes 327, residential hospices 8, and home health agencies 157. The rules would also affect prescribed child care centers and HIV supportive living centers; however, there are currently no facilities in Tennessee licensed under these categories. These facilities and/or businesses will directly benefit from the proposed rule.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule should be minimal.

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

   These proposed rules will positively affect those licensed speech language pathologists and clinical fellows as the amendments will correctly define the terms of their practice removing ambiguity in the current rules which use old language referring to the practice of speech therapy. Consumers will benefit as the clarification in the rules allows clinical fellows to provide speech language therapy.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and or objectives of the proposed rule.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: These proposed rules closely mirror the rules for the Board of Communications Disorders and Sciences.

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

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

Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

13

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

For Department of State Use Only

Sequence Number: 09-28-15
Rule ID(s): 6036-6042
File Date: 9/15/15
Effective Date: 12/14/15

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Health
Division:	Board for Licensing Health Care Facilities
Contact Person:	Kyonzté Hughes-Toombs Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Kyonzte.Hughes-Toombs@tn.gov

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

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

Chapter Number	**Chapter Title**
1200-08-02	Standards for Prescribed Child Care Centers
Rule Number	**Rule Title**
1200-08-02-.01	Definitions
1200-08-02-.06	Basic Services

Chapter Number	**Chapter Title**
1200-08-06	Standards for Nursing Homes
Rule Number	**Rule Title**
1200-08-06-.01	Definitions
1200-08-06-.06	Basic Services

Chapter Number	**Chapter Title**
1200-08-15	Standards for Residential Hospices
Rule Number	**Rule Title**
1200-08-15-.01	Definitions
1200-08-15-.06	Basic Hospice Functions

Chapter Number	Chapter Title
1200-08-26	Standards for Homecare Organizations Providing Home Health Services
Rule Number	**Rule Title**
1200-08-26-.01	Definitions
1200-08-26-.06	Basic Agency Functions

Chapter Number	Chapter Title
1200-08-27	Standards for Homecare Organizations Providing Hospice Services
Rule Number	**Rule Title**
1200-08-27-.01	Definitions
1200-08-27-.06	Basic Agency Functions

Chapter Number	Chapter Title
1200-08-28	Standards for HIV Supportive Living Centers
Rule Number	**Rule Title**
1200-08-28-.01	Definitions
1200-08-28-.06	Basic HIV Supportive Living Facility Functions

Chapter Number	Chapter Title
1200-08-34	Standards for Homecare Organizations Providing Professional Support Services
Rule Number	**Rule Title**
1200-08-34-.01	Definitions
1200-08-34-.06	Basic Agency Functions

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

CHAPTER 1200-08-02
STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

TABLE OF CONTENTS

1200-08-02-.01	Definitions
1200-08-02-.02	Licensing Procedures
1200-08-02-.03	Disciplinary Procedures
1200-08-02-.04	Administration
1200-08-02-.05	Admissions, Discharges, and Transfers
1200-08-02-.06	Basic Services
1200-08-02-.07	Building Standards
1200-08-02-.08	Life Safety
1200-08-02-.09	Infectious and Hazardous Waste
1200-08-02-.10	Records and Reports
1200-08-02-.11	Child, Parent or Responsible Party's Rights
1200-08-02-.12	Policies and Procedures for Health Care Decision-Making
1200-08-02-.13	Disaster Preparedness
1200-08-02-.14	Appendix I

1200-08-02-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. The individual designated by the licensee or the governing body to be the person responsible for the day to day supervision and operation of the PCCC and may be either the licensee or the nursing director.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Board. The Tennessee Board for Licensing Health Care Facilities.

(7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary function in a child, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a child where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(Rule 1200-08-02-.01, continued)

(10) Certified Nurse Practitioner. A person who is licensed as a registered nurse and has further been issued a certificate of fitness to prescribe and/or issue drugs by the Tennessee Board of Nursing.

(11) Certified Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(12) Child or Children. A person or persons under 18 years of age.

(13) Child Care. The provision of supervision, protection, and meeting, at a minimum, the basic needs of a child for three (3) or more hours a day, but less than twenty-four (24) hours a day.

(14) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(15)~~(14)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(16)~~(15)~~ Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(17)~~(16)~~ Department. The Tennessee Department of Health.

(18)~~(17)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(19)~~(18)~~ Developmentally Appropriate. As defined by the National Association for the Education of Young Children, developmentally appropriate practice is the use of child development knowledge to identify the range of appropriate behaviors, activities and materials for a specific age group. This knowledge is used in conjunction with understanding about an individual child's growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. Developmentally appropriate curriculum provides for all areas of a child's development: physical, emotional, social, and cognitive through an integrated approach.

(20)~~(19)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners.

(21)~~(20)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(22)~~(21)~~ Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(23)~~(22)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(24)~~(23)~~ Emergency. Any situation or condition which presents an imminent danger of death or serious physical or mental harm to children.

(25)~~(24)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(Rule 1200-08-02-.01, continued)

(26)~~(25)~~ Functional Assessment. An evaluation of the child's abilities and needs related to self care, communication skills, social skills, motor skills, pre-academic areas, play with toys/objects, growth and development appropriate for age.

(27)~~(26)~~ Group. A specific number of children comprising an age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distractions.

(28)~~(27)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(29)~~(28)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(30)~~(29)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(31)~~(30)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(32)~~(31)~~ Health Care Decision-maker. In the case of an individual who lacks capacity, the individual's health care decision-maker is one of the following: the individual's health care agent as specified in an advance directive, the individual's court-appointed guardian or conservator with health care decision-making authority, the individual's surrogate as determined pursuant to Rule 1200-08-02-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(33)~~(32)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(34)~~(33)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.

(35)~~(34)~~ High School Diploma. As used in the context of staff qualifications, refers to a document recognizing graduation from a legally approved institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as a high school diploma.

(36)~~(35)~~ Holding Out to the Public. Advertising or soliciting the public through the use of personal, telephone, mail or other forms of communication to provide information about services provided by the facility.

(37)~~(36)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(38)~~(37)~~ Infant. A child who is six (6) weeks through fifteen (15) months of age.

(39)~~(38)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(Rule 1200-08-02-.01, continued)

(40)~~(39)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(41)~~(40)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(42)~~(41)~~ Licensed Practical Nurse. A person currently licensed as such by Tennessee Board of Nursing.

(43)~~(42)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the child's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part, which includes labor when delivery is imminent, when there is inadequate time to effect safe transfer to a hospital prior to delivery, or when a transfer may pose a threat to the health and safety of the child or the unborn child.

(44)~~(43)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(45)~~(44)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(46)~~(45)~~ Mid-Level Practitioner. A certified nurse practitioner or a licensed physician assistant.

(47)~~(46)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(48)~~(47)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(49)~~(48)~~ N.F.P.A. The National Fire Protection Association.

(50)~~(49)~~ Nursing Director. A licensed registered nurse providing continuous supervision of PCCC services and managing the operations of the facility.

(51)~~(50)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(52)~~(51)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(53)~~(52)~~ Optometrist. A person currently licensed as such by the Tennessee Board of Optometry.

(Rule 1200-08-02-.01, continued)

(54)~~(53)~~ Parent. A biological, legal or adoptive parent, guardian, or a legal or physical custodian who has primary responsibility for a child.

(55)~~(54)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(56)~~(55)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(57)~~(56)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(58)~~(57)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(59)~~(58)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(60)~~(59)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(61)~~(60)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(62)~~(61)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(63)~~(62)~~ Plan of Care. The comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided upon admission and shall include necessary equipment to meet the child's need, and the plan will be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations will be specified in the Plan of Care.

(64)~~(63)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(65)~~(64)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(Rule 1200-08-02-.01, continued)

(66)~~(65)~~ Prescribed Child Care Center (PCCC). A nonresidential child care, health care/child care center providing physician prescribed services and appropriate developmental services for six (6) or more children who are medically and/or technology dependent and require continuous nursing intervention. Child care for purposes of this section means the provision of supervision, protection, and meeting the basic needs of children, who are not related to the primary caregivers, for three (3) or more hours a day, but less than twenty-four (24) hours a day. As part of the continuum of care for medically dependent children, the center provides a triad of medically necessary services: skilled nursing care, developmental programming, and parental training. Prescribed child care (PCCC) provides a less restrictive alternative to hospitalization and reduces the isolation often experienced by the homebound, medically dependent child and family. The purpose of prescribed childcare is health care, but does not exclude other services.

(67)~~(66)~~ Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(68)~~(67)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(69)~~(68)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the child's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(70)~~(69)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(71)~~(70)~~ Registered Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(72)~~(71)~~ Shall or Must. Compliance is mandatory.

(73)~~(72)~~ Social Worker. A person who has at least a bachelor's degree in Social Work or related field, and preferably, two (2) years medical social work or other community based work experience.

~~(73) Speech Pathologist. A person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.~~

(74) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(75)~~(74)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(76)~~(75)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(77)~~(76)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(78)~~(77)~~ Toddler. A child who is sixteen (16) months through thirty (30) months of age.

(Rule 1200-08-02-.01, continued)

(79)~~(78)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the child.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed July 3, 1984; effective August 1, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 1, 1992; effective May 16, 1992. Amendment filed January 6, 1995; effective March 22, 1995. Repeal filed March 18, 2000; effective May 30, 2000. New rule filed June 13, 2002; effective August 27, 2002. Amendment filed May 16, 2006; effective July 30, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

(Rule 1200-08-02-.05, continued)

(f) The plan shall be signed by the authorized representative of the PCCC, physician, and parent(s). Copies of the plan shall be given to the parent(s) and the PCCC staff.

(g) A consent form, outlining the purpose of a PCCC facility, family responsibilities, authorized treatment, and emergency disposition plans shall be signed by the parent(s) and witnessed prior to admission to the PCCC facility. The original consent form shall be retained by the facility. The parent(s) shall be provided a copy of the consent form.

(h) At the time of admission, written policies and procedures of the PCCC shall be provided to parents or other applicants. Policies shall include criteria for dismissal of children. A copy of PCCC policies and procedures shall be given to the parent and documentation of receipt filed in the child's record.

(i) A pre-enrollment visit to the center by the parent shall be documented.

(j) Upon enrollment of a child, the parent shall receive a summary of the Department's licensing requirements and receipt of the summary shall be documented by the parent's signature.

(k) Each PCCC shall develop a plan for regular and ongoing communication with parents. This plan shall include communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.

(l) During normal operating hours, parents shall be permitted access to their children, and ready access to all areas of the PCCC shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(m) Parents shall be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

(n) Children shall not be in care for more than sixteen hours in a twenty-four hour period except in special circumstances (e.g., acute illness of or injury to parents, natural disaster, unusual work hours). Individual plans for extended care shall be maintained, with documentation, signed by parent and administrator, retained on file.

(o) Part-time children shall be counted in the ratio and group and shall have required records on file before they are cared for.

(p) Any infant or child not meeting the criteria set out in 1200-08-02-.05(2)(a)-(c) shall be discharged from the PCCC.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002.*

1200-08-02-.06 BASIC SERVICES.

(1) Nursing Services.

(a) The PCCC must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. A registered nurse must be on the premises at all times during business hours.

(b) The PCCC must have a well-organized service with a plan of administrative authority and delineation of responsibilities for child care. The nursing director must be a licensed

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

registered nurse who is responsible for the operation of the nursing service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for the PCCC.

(c) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care to all children as needed. There must be supervisory and staff personnel for each department or unit of the PCCC to ensure, when needed, the immediate availability of a registered nurse.

(d) There must be a procedure to ensure that nursing personnel for whom licensure is required have valid and current licenses.

(e) A registered nurse must assess, supervise and evaluate the nursing care for each child.

(f) The PCCC must ensure that an appropriate individualized plan of care is prepared for each child.

(g) A registered nurse must assign the nursing care of each child to other nursing personnel in accordance with the child's needs and the specialized qualifications and competence of the nursing staff available. All nursing personnel shall have specialized training and a program in-service and continuing education commensurate with the duties and responsibilities of the individual. All training shall be documented for each individual so employed, along with documentation of annual competency skills. Orientation of any new personnel must be conducted within the first two weeks of employment.

(h) Non-employee licensed nurses who are working in the PCCC must adhere to the policies and procedures of the facility. The nursing director must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service. Annual competency and skill documentation must be demonstrated on these individuals just as on employees, if they perform clinical activities.

(i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements.

(j) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the child. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they must be:

1. Accepted only by personnel that are authorized to do so by policies and procedures, consistent with federal and state law; and

2. Signed or initialed by the prescribing practitioner according to policy.

(k) Intravenous medications must be administrated in accordance with state law and approved policies and procedures.

(l) There must be a procedure for reporting adverse drug reactions and errors in administration of drugs.

(2) Physician Services.

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

(a) Policies and procedures concerning services provided by the PCCC shall be available to the children's primary care physicians as requested.

(b) If children with mental, physical or other impairments or with a medical disorder are enrolled, and special care is needed, a physician's statement shall identify the condition and give the appropriate care professional special instructions for the child's care.

(c) Children shall be aided in receiving dental care as deemed necessary.

(d) Consultation with a physician shall occur at least annually to review medical care provided within the PCCC and shall include, but not be limited to:

1. Evaluate the delivery of emergency and medical care when the child's primary physician or his/her designated alternative is unavailable;

2. Review reports of accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;

3. Review performance improvement, infection control and safety action plans for appropriate actions;

4. Monitor the health status of facility personnel to ensure that no health conditions exist which would adversely affect children; and

5. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Educational Services

(a) The PCCC will provide parent(s) education services by including them in care related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychological needs of their child at home.

(b) Monthly educational development programs shall be conducted and documented. These programs shall be provided to:

1. Develop collaborative relationships between health professionals and parent(s).

2. Increase understanding and coping with the effects of childhood illness, and shall cover a variety of topics including:

(i) issues of death and dying;

(ii) awareness of services available;

(iii) fostering of advocacy skills;

(iv) impact of illness on child development; and

(v) parenting an ill child.

3. Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

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

4. Develop a comprehensive Plan of Care to include the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children, including training in the implementation of new technology.

5. Prepare for management of emergency medical situations.

(c) A comprehensive orientation to acquaint the parent(s) with the philosophy and services of the PCCC shall be provided at the time of the child's placement in the PCCC.

(d) Activities shall be used for the children based on developmentally appropriate educational practices.

(e) To the extent that children are physically able to participate, a daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science and health.

(f) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group who are physically able to participate.

(g) Activities for infants/toddlers shall provide experience for the development of language, gross motor, fine motor, social/personal, cognitive, and self-help skills. Examples of such activities include music, dramatic play, story-time, free activity periods, outdoor play, and the opportunity to explore many materials, situations, and roles.

(h) Because of the importance of language development and communication skills to infants and toddlers, they shall be talked to, listened to, read to and sung to, in addition to other language experience activities, including but not limited to, finger plays, patty cake, and flannel board activities.

(4) Nutritional Services

(a) The PCCC must have an organized dietary service that is directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for consultant liaison with the facility staff for recommendations on dietetic policies affecting the children's treatment. If an outside contract is utilized for management of its dietary services, the facility shall designate a full-time employee to be responsible for the overall management of the services.

(b) The PCCC must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

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

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the child and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) Menus must meet the needs of the children.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the children and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the children.

4. A current therapeutic diet manual approved by the dietitian and nursing director must be readily available to all nursing and food service personnel.

(e) Educational programs, including orientation, on-the-job training, inservice education, and continuing education, shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to children with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the children. Menus of food served shall be kept on file for a thirty (30) day period.

(h) The dietician or designee shall have a conference, dated on the medical record with each child and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The child's dietary preferences shall be recorded and utilized in planning his/her daily menu.

(i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.

(j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F

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

or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(k) Food shall not be forced on or withheld from children. Food shall not be used as a reward, nor shall food be used or withheld as punishment.

(l) Specific feeding instructions given by parents shall be in writing. If staff feel instructions to be inappropriate or in conflict with established policy or the therapeutic diet prescribed by the practitioner, staff shall initiate discussion with the parent to resolve the conflict.

(m) New foods shall be introduced to infants and toddlers; foods shall be introduced one at a time over a five-to-seven day period with parental approval.

(n) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour. (Infants fed breast milk may require more frequent feedings than formula-fed babies.)

(o) Parents and caregivers shall work together when weaning an infant to insure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.

(p) Children shall not be permitted to carry a bottle with them throughout the day.

(q) All formulas and food brought from home shall be labeled with child's name. Milk shall be placed immediately in the refrigerator. Once milk has been warmed, it shall not be rewarmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.

(r) Frozen breast milk shall be dated when expressed. Bottled breast milk shall not be heated in a microwave oven. To prevent scalding, extreme caution shall be taken when a microwave oven is used to heat food.

(s) Previously opened baby food jars shall be not accepted in the PCCC.

(t) Infants shall be held while being fed if they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped. A child shall not be given a bottle while lying flat.

(u) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon. Children shall not be left unattended while eating.

(v) Dishwashing machines shall be used according to manufacturer specifications.

(w) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(x) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Services Sanitation Manual":

(y) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

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

(z) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45^0F. Freezers shall be kept at a temperature not to exceed 0^0 F.

(aa) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments", and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(5) Pharmaceutical Services.

(a) The PCCC shall have pharmaceutical services that meet the needs of the children and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The administrator is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every PCCC shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the child's medical chart each time a Schedule II drug is given. The notation shall include the name of each child receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the child. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be maintained for each child. Each dose shall be properly recorded in the medical record after it has been administered.

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

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or nursing personnel or other licensed health professionals acting within the scope of their licenses.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the child, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the parent(s) or only on discharge. A notation of drugs released shall be entered into the medical record. All unused prescriptions not taken by the parent and left at the PCCC must be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the PCCC.

(6) Rehabilitation Services.

(a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by PCCC policy and consistent with state law.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c)~~(b)~~ A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.

(d)~~(c)~~ Direct contact shall exist between the child and the therapist for those children that require treatment ordered by a physician.

(e)~~(d)~~ If ordered by a physician, the physical therapist and the occupational therapist shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.

(g)~~(e)~~ Therapy services shall be coordinated with the nursing service and made a part of the child's treatment plan.

(h)~~(f)~~ Sufficient staff shall be made available to provide the service ordered.

(7) Psychologist/Social Work Services.

(a) Social services and psychological services must be available to the children, the child's family and other persons significant to the child, in order to facilitate adjustment of these individuals to the impact of the child's illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

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

(c) Psychological services shall include psychoanalysis, psychotherapy, psychological testing, psychoeducational evaluation therapy remediation and consultation.

(d) A child's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.

(e) Social work services shall be provided by a qualified social worker.

(f) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(8) Respiratory Care Services (Optional).

(a) If the PCCC provides respiratory care services, the PCCC must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the respiratory care services must be appropriate to the scope and complexity of the services offered.

(c) There must be adequate numbers of licensed respiratory therapists, respiratory technicians, and other personnel to provide the ordered services.

(d) Services must be delivered in accordance with physician directives.

(e) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures must be designated in writing.

(9) Infection Control.

(a) The PCCC must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an infection control program, including members of the multidisciplinary staff such as nursing and administrative staff, develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4 Written procedures concerning food handling, laundry practices, disposal of environmental and human wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the child care center: hepatitis A, foodborne outbreaks (food poisoning) salmonella, shigella, measles, mumps, rubella, pertussis, polio, haemophilus influenza type B, meningococcal meningitis. The PCCC shall report the occurrence of the above diseases to the local health department.

(e) Impetigo and diagnosed strep shall be treated appropriately for 24 hours prior to readmission to the center. Children having scabies or lice shall have proof of treatment to be readmitted. The PCCC shall provide care and/or isolation for a child with a contagious condition only if written instructions of a licensed physician or certified health care provider are obtained first.

(f) The PCCC shall develop policies and procedures for testing a child's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a child's blood or other body fluid. The testing shall be performed at no charge to the child and the test results shall be confidential.

(g) The facility and its employees shall adopt and utilize standard or universal precautions of the Centers for Disease Control (CDC) for preventing transmission of infections, HIV, and communicable diseases.

(h) All PCCCs shall adopt appropriate policies regarding the testing of children and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.

(i) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(j) Space and facilities for housekeeping equipment and supplies shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from child care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(10) Performance Improvement.

(a) The PCCC must ensure that there is an effective, facility-wide performance improvement program to evaluate child care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services related to child care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated; and,

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

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment.

(c) The PCCC must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its children.

(d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) Performance improvement program records shall be disclosable to the Department to demonstrate compliance with this section.

(f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.

(11) Transportation Services (If Provided)

(a) If a PCCC provides transportation, its management shall recognize its full responsibility for the child between home and facility and on field trips. On field trips or when transporting children between home and the facility, staff shall maintain an accurate list of children being transported and shall take roll frequently. The driver or accompanying staff member shall assure that every child is received by a parent or other designated person. The owner of the vehicle shall carry adequate liability insurance.

(b) Parents shall be notified of each field trip and notification documented.

(c) Vehicles used to transport children shall be maintained in safe working condition. Regular scheduled inspections shall be documented. Documentation of regular maintenance shall be kept on file in the facility. (See Appendix A)

(d) The driver shall comply with the health requirements as specified in Appendix C of these Rules.

(e) On field trips off premises, at least two (2) adults shall be in the vehicle, in addition to the driver.

(f) Children shall always be attended by a licensed nurse while in a vehicle.

(g) The number of infants and other non-ambulatory children transported by one licensed nurse shall be limited to six. A second licensed nurse shall be in the vehicle supervising the children when seven or more children are being transported.

(h) Transportation provided by the PCCC or under PCCC auspices shall comply with state law.

(i) All children and the driver shall be secured in individual passenger restraint devices at all times during the transportation by the PCCC or under PCCC auspices. Exception: Children four (4) years of age and older transported by a school bus or public transportation are not required to be restrained because these vehicles are not required to be equipped with restraint devices.

(j) No child shall be allowed to ride on the floor of a vehicle, and no child shall be placed with another child in the same restraint device.

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

(k) Drivers of any vehicle used to transport children shall have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in Chapter 50 of Title 55 of the Tennessee Code Annotated.

(l) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced by all staff responsible for transporting children on a regular basis.

(m) Storage of firearms is prohibited in vehicles used to transport children.

(n) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.

(o) Children shall not spend more than ninety (90) minutes traveling one way.

(12) Recreational Services.

(a) The PCCC shall provide opportunities for recreational activities appropriate to the needs, interests, and ages of the children being served.

(b) Equipment needs for Children:

1. General

(i) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, no sharp edges, splinters, or nails sticking out, no open S-hooks or pinch points within children's reach.

(ii) Damaged equipment shall be repaired or removed from the room or playground immediately.

(iii) Equipment shall be kept clean by washing frequently with soap and water.

(iv) There shall be developmentally appropriate equipment and furnishings for each age group in attendance.

(v) Material and equipment shall be provided to meet the needs of all the children enrolled.

(vi) Individual lockers, separate hooks and shelves or other containers (placed at children's reaching level for mobile children) shall be provided for each child's belongings.

2. Indoor Play Equipment

(i) Pieces of equipment, such as television sets, bookcases and appliances, shall be secured or supported so that they will not fall or tip over.

(ii) Indoor equipment, materials, and toys shall be available to:

(I) Meet active and quiet play needs of all children enrolled;

(II) Provide a variety of developmentally appropriate activities so that each child has at least three choices during play time; and

(III) Adequately provide for all the activities required in other sections of this rule.

(iii) Toys, educational and play materials shall be organized and displayed within children's reach so that, if physically able, they can select and return items independently.

(iv) Teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.

3. Outdoor Play Equipment (Optional)

(i) All outdoor play equipment shall be sufficient in amount and variety so that children can take part in many kinds of play each day.

(ii) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" or similar authority shall be used for guidance on playground construction and maintenance.

(iii) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend at least four (4) feet and preferably six (6) feet away from the perimeter of equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.

(iv) Resilient surfacing material shall cover fall zones at a recognized acceptable depth. (See Appendix B)

(v) Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.

(13) Environmental Services.

(a) Environmental services shall be provided to assure the clean and sanitary condition of the PCCC and to provide a safe and hygienic environment for children and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and PCCC policy; and

(b) There shall be verification of regular continuing education and competency for basic housekeeping principles.

(c) Each facility shall have routine cleaning of articles and surfaces such as furniture, floors, walls, ceilings, supplies, exhaust, grills and lighting fixtures.

(d) Sufficient and proper cleaning supplies and equipment shall be available to housekeeping staff. Cleaning supplies, toxic substances and equipment shall be secured at all times to prevent access by children. Toxic substances shall not be left unattended when not secured.

(e) A closet for janitorial supplies shall be provided.

(f) Storage for bulk supplies and equipment shall be located away from child care areas. Storage shall not be allowed in the outmost shipping carton.

(g) The building shall be kept in good repair, clean, sanitary and safe at all times.

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

(14) Laundry Services.

(a) Laundry services shall:

1. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the PCCC; and

2. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(b) The PCCC shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the PCCC or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

Authority: *§§ 4-5-202, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-222.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002. Amenment filed December 16, 2013; effective March 16, 2014.*

1200-08-02-.07 BUILDING STANDARDS.

(1) A PCCC shall construct, arrange, and maintain the condition of the physical plant and the overall facility environment in such a manner that the safety and well-being of the occupants are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All new facilities shall conform to the 2006 edition of the International Building Code, except for Chapter 11 pertaining to accessibility and except for Chapter 27 pertaining to electrical requirements; the 2006 edition of the International Mechanical Code; the 2006 edition of the International Plumbing Code; the 2010 Guidelines for Design and Construction of Health Care Facilities; the 2006 edition of the International Fuel and Gas Code; the 2006 edition of the National Fire Protection Code (NFPA) NFPA 1 including Annex A which incorporates the 2006 edition of the Life Safety Code; the 2005 edition of the National Electrical Code; and the 2005 edition of the U.S. Public Health Service Food Code as adopted by the Board for Licensing Health Care Facilities. The requirements of the 2004 Americans with Disabilities Act (A.D.A.), and the 1999 edition of North Carolina Handicap Accessibility Codes with 2004 amendments apply to all new facilities and to all existing facilities that are enlarged or substantially altered or repaired after July 1, 2006. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes and regulations and provisions of this chapter, the most stringent requirements shall apply.

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

CHAPTER 1200-08-06
STANDARDS FOR NURSING HOMES

TABLE OF CONTENTS

1200-08-06-.01 Definitions
1200-08-06-.02 Licensing Procedures
1200-08-06-.03 Disciplinary Procedures
1200-08-06-.04 Administration
1200-08-06-.05 Admissions, Discharges, and Transfers
1200-08-06-.06 Basic Services
1200-08-06-.07 Special Services: Alzheimer's Units
1200-08-06-.08 Building Standards
1200-08-06-.09 Life Safety
1200-08-06-.10 Infectious and Hazardous Waste
1200-08-06-.11 Records and Reports
1200-08-06-.12 Resident Rights
1200-08-06-.13 Policies and Procedures for Health Care Decision-Making
1200-08-06-.14 Disaster Preparedness
1200-08-06-.15 Nurse Aide Training and Competency Evaluation
1200-08-06-.16 Appendix I

1200-08-06-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person currently licensed as such by the Tennessee Board of Examiners for Nursing Home Administrators.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Board. The Tennessee Board for Licensing Health Care Facilities.

(7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) Certified Nurse Aide or Certified Nursing Assistant. An individual who has successfully completed an approved nursing assistant training program and is registered with the department.

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

(10) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(11)~~(10)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12)~~(11)~~ Competent. A resident who has capacity.

(13)~~(12)~~ Department. The Tennessee Department of Health.

(14)~~(13)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(15)~~(14)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. § 63-25-104.

(16)~~(15)~~ Director of Nursing (DON). A Registered Nurse employed full time in a nursing home who satisfies the responsibilities set forth in this chapter.

(17)~~(16)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(18)~~(17)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(19)~~(18)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(20)~~(19)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(21)~~(20)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(22)~~(21)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(23)~~(22)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(24)~~(23)~~ Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-06-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(25)~~(24)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

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

(26)~~(25)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(27)~~(26)~~ Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(28)~~(27)~~ Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such person, and maternity care involving labor and delivery for any period of time.

(29)~~(28)~~ Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(30)~~(29)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(31)~~(30)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(32)~~(31)~~ Involuntary Transfer. The movement of a resident between nursing homes, without the consent of the resident, the resident's legal guardian, next of kin or representative.

(33)~~(32)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(34)~~(33)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(35)~~(34)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(36)~~(35)~~ Medical Director. A licensed physician employed by the nursing home to be responsible for medical care in the facility.

(37)~~(36)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(38)~~(37)~~ Medical Equipment. Equipment used for the diagnosis, treatment and monitoring of patients, including, but not limited to, oxygen care equipment and oxygen delivery systems, enteral and parenteral feeding pumps, and intravenous pumps.

(39)~~(38)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to residents.

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

(40)~~(39)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

(41)~~(40)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(42)~~(41)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(43)~~(42)~~ NFPA. The National Fire Protection Association.

(44)~~(43)~~ Nurse Aide or Nursing Assistant Training Program. A specialized program approved by the Department to provide classroom instruction and supervised clinical experience for individuals who wish to be employed as Nurse Aides or Nursing Assistants.

(45)~~(44)~~ Nursing Personnel. Licensed nurses and certified nurse aides who provide nursing care.

(46)~~(45)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(47)~~(46)~~ Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.

(48)~~(47)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(49)~~(48)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(50)~~(49)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(51)~~(50)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(52)~~(51)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(53)~~(52)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

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

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(54)~~(53)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(55)~~(54)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(56)~~(55)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(57)~~(56)~~ Program Coordinator. A registered nurse who possesses a minimum of two years nursing experience with at least one year in long term care and is responsible for ensuring that the requirements of the Nurse Aide Training Program are met.

(58)~~(57)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(59)~~(58)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(60)~~(59)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(61)~~(60)~~ Resident/Patient. Includes but is not limited to any person who is suffering from an illness or injury and who is in need of nursing care.

(62)~~(61)~~ Secured Unit. A facility or distinct part of a facility where residents are intentionally denied egress by any means.

(63)~~(62)~~ Shall or Must. Compliance is mandatory.

(64)~~(63)~~ Social Worker. In a facility with more than 120 beds a qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and,

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

(b) One year of supervised social work experience in a health care setting working directly with individuals.

~~(64) Speech Therapist. A person currently licensed as such by the Tennessee Board of Communication Disorders and Sciences.~~

(65) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(66)~~(65)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(67)~~(66)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(68)~~(67)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(69)~~(68)~~ Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(70)~~(69)~~ Survey. An on-site examination by the department to determine the quality of care and/or services provided.

(71)~~(70)~~ Transfer. The movement of a resident between nursing homes at the direction of a physician or other qualified medical personnel when a physician is not readily available. The term does not include movement of a resident who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons, the discharge or release of a resident no longer in need of nursing home care, or a nursing home's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for nursing home care.

(72)~~(71)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

(73)~~(72)~~ Treating Physician. The physician selected by or assigned to the resident and who has the primary responsibility for the treatment and care of the resident. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-234, 68-11-1802, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed September 21, 2005; effective December 5, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-06-.02 LICENSING PROCEDURES.

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

(10) No resident shall be transferred without a written order from the attending physician or through other legal processes and timely notification of next of kin and/or sponsor or authorized representative, if any.

(11) When a resident is transferred, a summary of treatment given at the nursing home, condition of the resident at time of transfer and date and place to which he is transferred shall be entered in the record. If the transfer is due to an emergency, this information will be recorded within forty-eight (48) hours, otherwise, it will precede the transfer of the resident.

(12) When a resident is transferred, a copy of the clinical summary shall, with consent of the resident, be sent to the nursing home that will continue the care of the resident.

(13) Where an involuntary transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:

(a) The traumatic effect on the resident.

(b) The proximity of the proposed nursing home to the present nursing home and to the family and friends of the resident.

(c) The availability of necessary medical and social services at the proposed nursing home.

(d) Compliance by the proposed nursing home with all applicable Federal and State regulations.

(14) When the attending physician has ordered a resident transferred or discharged, but the resident or a representative of the resident opposes the action, the nursing home shall counsel with the resident, the next of kin, sponsor and representative, if any, in an attempt to resolve the dispute and shall not transfer the resident until such counseling has been provided. No involuntary transfer or discharge shall be made until the nursing home has first informed the department and the area long-term care ombudsman. Unless a disaster occurs on the premises or the attending physician orders the transfer as a medical emergency (due to the resident's immediate need for a higher level of care) no involuntary transfer or discharge shall be made until five (5) business days after these agencies have been notified, unless they each earlier declare that they have no intention of intervening.

(15) Except when the Board has revoked or suspended the license, a nursing home which intends to close, cease doing business, or reduce its licensed bed capacity by ten percent (10%) or more shall notify both the department and the area long-term care ombudsman at the earliest moment of the decision, but not later than thirty (30) days before the action is to be implemented. The facility shall establish a protocol, subject to the department's approval, for the transfer or discharge of the residents. Should the nursing home violate the provisions of this paragraph, the department shall request the Attorney General of the State of Tennessee to intervene to protect the residents, as is provided by T.C.A. § 68-11-213(a).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-257, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed April 17, 2007; effective July 1, 2007.*

1200-08-06-.06 BASIC SERVICES.

(1) Performance Improvement.

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

(a) The nursing home must ensure that there is an effective, facility-wide performance improvement program to evaluate resident care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services related to resident care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated;

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment; and

4. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(c) The nursing home must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its residents.

(d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.

(f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.

(2) Physician Services.

(a) Policies and procedures concerning services provided by the nursing home shall be available for the admitting physicians.

(b) Residents shall be aided in receiving dental care as deemed necessary.

(c) Each nursing home shall retain by written agreement a physician to serve as a Medical Director.

(d) The Medical Director shall be responsible for the medical care in the nursing home. The Medical Director shall:

1. Delineate the responsibilities of and communicate with attending physicians to ensure that each resident receives medical care;

2. Ensure the delivery of emergency and medical care when the resident's attending physician or his/her designated alternate is unavailable;

3. Review reports of all accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;

4. Make periodic visits to the nursing home to evaluate the existing conditions and make recommendations for improvements;

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

5. Review and take appropriate action on reports from the Director of Nursing regarding significant clinical developments;

6. Monitor the health status of nursing home personnel to ensure that no health conditions exist which would adversely affect residents; and,

7. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Infection Control.

(a) The nursing home must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.

1. Any condition on the nursing home site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.

4. Equipment and supplies for physical examination and emergency treatment of residents shall be available.

5. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.

6. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.

7. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

8. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.

9. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the department shall be notified.

(c) The administrator shall assure that an infection control program including members of the medical staff, nursing staff and administrative staff develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident care equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(d) The administrator, the medical staff and director of nursing services must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a resident's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.

(f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

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

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

   (i) Types of patient care activities that can result in hand contamination;

   (ii) Advantages and disadvantages of various methods used to clean hands;

   (iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

   (iv) Morbidity, mortality, and costs associated with health care associated infections.

(g) All nursing homes shall adopt appropriate policies regarding the testing of residents and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.

(h) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of the vaccine. Influenza vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

(i) The facility shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;

2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;

3. Education of all direct care personnel about the following:

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation;

5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.

(j) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(k) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(l) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe and hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules herein and facility policy.

(m) Laundry facilities located in the nursing home shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the facility; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(n) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the nursing home or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,

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

4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

(4) Nursing Services.

(a) Each nursing home must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. Each home shall have a licensed practical nurse or registered nurse on duty at all times and at least two (2) nursing personnel on duty each shift.

(b) The facility must have a well-organized nursing service with a plan of administrative authority and delineation of responsibilities for resident care. The Director of Nursing (DON) must be a licensed registered nurse who has no current disciplinary actions against his/her license. The DON is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the facility.

(c) The Director of Nursing shall have the following responsibilities:

1. Develop, maintain and periodically update:

(i) Nursing service objectives and standards of practice;

(ii) Nursing service policy and procedure manuals;

(iii) Written job descriptions for each level of nursing personnel;

(iv) Methods for coordination of nursing service with other resident services; and,

(v) Mechanisms for monitoring quality of nursing care, including the periodic review of medical records.

2. Participate in selecting prospective residents in terms of the nursing services they need and nursing competencies available.

3. Make daily rounds to see residents.

4. Notify the resident's physician when medically indicated.

5. Review each resident's medications periodically and notify the physician where changes are indicated.

6. Supervise the administration of medications.

7. Supervise assignments of the nursing staff for the direct care of all residents.

8. Plan, develop and conduct monthly in-service education programs for nursing personnel and other employees of the nursing home where indicated. An organized orientation program shall be developed and implemented for all nursing personnel.

9. Supervise and coordinate the feeding of all residents who need assistance.

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

10. Coordinate the dietary requirements of residents with the staff responsible for the dietary service.

11. Coordinate housekeeping personnel.

12. Assure that discharge planning is initiated in a timely manner.

13. Assure that residents, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.

(d) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and certified nurse aides to provide nursing care to all residents as needed. Nursing homes shall provide a minimum of two (2) hours of direct care to each resident every day including 0.4 hours of licensed nursing personnel time. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the availability of a licensed nurse for bedside care of any resident.

(e) A registered nurse must supervise and evaluate the nursing care for each resident.

(f) The facility must ensure that an appropriate individualized plan of care is prepared for each resident with input from appropriate disciplines, the resident and/or the resident's family or the resident's representative.

(g) A registered nurse must assign the nursing care of each resident to other nursing personnel in accordance with the resident's needs and the specialized qualifications and competence of the nursing staff available.

(h) Non-employee licensed nurses who are working in the nursing home must adhere to the policies and procedures of the facility. The director of the nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service.

(i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(j) There must be a facility procedure for reporting adverse drug reactions and errors in administration of drugs.

(k) When non-employees are utilized as sitters or attendants, they shall be under the authority of the nursing service and their duties shall be set forth clearly in written nursing service policies.

(l) Each resident shall be given proper personal attention and care of skin, feet, nails and oral hygiene in addition to the specific professional nursing care as ordered by the resident's physician.

(m) Medications, treatments, and diet shall be carried out as prescribed to safeguard the resident, to minimize discomfort and to attain the physician's objective.

(n) Residents shall have baths or showers at least two (2) times each week, or more often if requested by the resident.

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

(o) Body position of residents in bed or chair bound shall be changed at least every two (2) hours, day and night, while maintaining good body alignment. Proper skin care shall be provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders.

(p) Residents who are incontinent shall have partial baths each time the bed or bed clothing has been wet or soiled. The soiled or wet bed linen and the bed clothing shall be replaced with clean, dry linen and clothing immediately after being soiled.

(q) Residents shall have shampoos, haircuts and shaves as needed, or desired.

(r) Rehabilitation measures such as assisting patients with range of motion, prescribed exercises and bowel and bladder retraining programs shall be carried out according to the individual needs and abilities of the resident.

(s) Residents shall be active and out of bed except when contraindicated by written physician's orders.

(t) Residents shall be encouraged to achieve independence in activities of daily living, self-care, and ambulation as a part of daily care.

(u) Residents shall have clean clothing as needed and shall be kept free from odor.

(v) Residents' weights shall be taken and recorded at least monthly unless contraindicated by a physician's order.

(w) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.

(x) Restraints may be applied or administered to residents only on the signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.

(y) When a resident's safety or safety of others is in jeopardy, the nurse in charge shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written order must be obtained as soon as possible.

(z) Locked restraints are prohibited.

(aa) Assistance with eating shall be given to the resident as needed in order for the resident to receive the diet for good health care.

(bb) Abnormal food intake will be evaluated and recorded.

(cc) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. The deceased was a resident of a nursing home;

2. The death was anticipated, and the attending physician or nursing home medical director has agreed in writing to sign the death certificate. Such agreement by the attending physician or nursing home medical director must be present with the deceased at the place of death;

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

3. The nurse is licensed by the state; and,

4. The nurse is employed by the nursing home in which the deceased resided.

(5) Medical Records.

(a) The nursing home shall comply with the Tennessee Medical Records Act, T.C.A. §§ 68-11-301, et seq.

(b) The nursing home must maintain a medical record for each resident. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The facility must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(c) All medical records, in either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the facility's policies and procedures, and no record may be destroyed on an individual basis.

(d) When a nursing home closes with no plans of reopening, an authorized representative of the facility may request final storage or disposition of the facility's medical records by the department. Upon transfer to the department, the facility relinquishes all control over final storage of the records and the files shall become property of the State of Tennessee.

(e) The nursing home must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.

(f) The nursing home must have a procedure for ensuring the confidentiality of resident records. Information from or copies of records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to or alter resident records. Original medical records must be released by the facility only in accordance with federal and state laws, court orders or subpoenas.

(g) The medical record must contain information to justify admission, support the diagnosis, and describe the resident's progress and response to medications and services.

(h) All entries must be legible, complete, dated and authenticated according to facility policy.

(i) All records must document the following:

1. Evidence of a physical examination, including a health history, performed no more than thirty (30) days prior to admission or within forty-eight (48) hours following admission;

2. Admitting diagnosis;

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

3. A dietary history as part of each resident's admission record;

4. Results of all consultative evaluations of the resident and appropriate findings by clinical and other staff involved in the care of the resident;

5. Documentation of complications, facility acquired infections, and unfavorable reactions to drugs;

6. Properly executed informed consent forms for procedures and treatments specified by facility policy, or by federal or state law if applicable, as requiring written resident consent;

7. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the resident's condition;

8. Discharge summary with disposition of case and plan for follow-up care; and,

9. Final diagnosis with completion of medical records within thirty (30) days following discharge.

(j) Electronic and computer-generated records and signature entries are acceptable.

(6) Pharmaceutical Services.

(a) The nursing home shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The medical staff is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every nursing home shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

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

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to nursing home policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their licenses.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a nursing home must be destroyed on the premises and recorded be a pharmacist. Such record shall be kept in the nursing home.

(7) Radiology Services. The nursing home must maintain or have available diagnostic radiologic services according to the needs of the residents. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(8) Laboratory Services. The nursing home must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The nursing home must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(9) Food and Dietetic Services.

(a) The nursing home must have organized dietary services that are directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for constant liaison with the facility medical staff for recommendations on dietetic policies affecting resident treatment. If an outside contract is utilized for management of its dietary services, the facility shall

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

designate a full-time employee to be responsible for the overall management of the services.

(b) The nursing home must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the resident and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) Menus must meet the needs of the residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

4. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(e) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse

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

between supper and breakfast. Additional nourishments shall be provided to patients with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the residents. Menus of food served shall be kept on file for a thirty (30) day period.

(h) The dietitian or designee shall have a conference, dated on the medical chart, with each resident and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The resident's dietary preferences shall be recorded and utilized in planning his/her daily menu.

(i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.

(j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(k) All nursing homes shall have commercial automatic dishwashers approved by the National Sanitation Foundation. Dishwashing machines shall be used according to manufacturer specifications.

(l) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(m) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(n) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(o) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.

(p) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(10) Social Work Services.

(a) Social services must be available to the resident, the resident's family and other persons significant to the resident, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.

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

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(c) A resident's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.

(d) Social work services shall be provided by a qualified social worker.

(e) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(11) Physical, Occupational and Speech Therapy Services.

(a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by nursing home policy, consistent with state law.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c)~~(b)~~ A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.

(d)~~(c)~~ Direct contact shall exist between the resident and the therapist for those residents that require treatment ordered by a physician.

(e)~~(d)~~ The physical therapist and occupational therapist, pursuant to a physician order, shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.

(f)~~(e)~~ Therapy services shall be coordinated with the nursing service and made a part of the resident care plan.

(g)~~(f)~~ Sufficient staff shall be made available to provide the service offered.

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

(a) Ensuring a licensed respiratory care practitioner as defined by Tennessee Code Annotated Section 63-27-102(7), shall be physically present at the facility twenty four (24) hours per day, seven (7) days per week to provide:

1. ventilator care;

2. administration of medical gases;

3. administration of aerosol medications; and

4. diagnostic testing and monitoring of life support systems;

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

(b) Ensuring that an appropriate, individualized plan of care is prepared for each patient requiring ventilator services. The plan of care shall be developed with input and participation from a pulmonologist or a physician with experience in ventilator care;

(c) Ensuring that admissions criteria is established to ensure the medical stability of ventilator-dependent patients prior to transfer from an acute care setting;

(d) Ensuring that Arterial Blood Gas (ABG) is readily available in order to document the patient's acid base status and/or End Tidal Carbon Dioxide (etCOs) and whether continuous pulse oximetry measurements should be performed in lieu of ABG studies;

(e) Ensuring that an audible, redundant external alarm system is located outside of each ventilator-dependent patient's room for the purpose of alerting caregivers of patient disconnection, ventilator disconnection or ventilator failure;

(f) Ensuring that the nursing home is equipped with emergency suction equipment and an adequate number of Ambu bags for manual ventilation;

(g) Ensuring that ventilator equipment is connected to electrical outlets connected to back-up generator power;

(h) Ensuring that ventilators are equipped with battery back-up systems;

(i) Ensuring that the nursing home is equipped to employ the use of current ventilator technology consistent with meeting patients' needs for mobility and comfort; and

(j) Ensuring that a back-up ventilator is available at all times.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed January 29, 1991; effective March 15, 1991. Amendment filed December 29, 1992; effective February 15, 1993. Amendment filed June 15, 1993; effective July 30, 1993. Amendment filed April 17, 1996; effective July 1, 1996. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 29, 2000; effective June 12, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-06-.07 SPECIAL SERVICES: ALZHEIMER'S UNITS. Structurally distinct parts of a nursing home may be designated as special care units for ambulatory residents with dementia or Alzheimer's Disease and related disorders. Such units shall be designed to encourage self-sufficiency, independence and decision-making skills, and may admit residents only after the unit is found to be in compliance with licensure standards and upon final approval by the department. Units which hold themselves out to the public as providing specialized Alzheimer's services shall comply with the provisions of T.C.A. § 68-11-1404 and shall be in compliance with the following minimum standards:

(1) In order to be admitted to the special care unit:

(a) A diagnosis of dementia must be made by a physician. The specific etiology causing the dementia shall be identified to the best level of certainty prior to admission to the special care unit; and,

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

CHAPTER 1200-08-15
STANDARDS FOR RESIDENTIAL HOSPICES

TABLE OF CONTENTS

1200-08-15-.01	Definitions
1200-08-15-.02	Licensing Procedures
1200-08-15-.03	Disciplinary Procedures
1200-08-15-.04	Administration
1200-08-15-.05	Admissions, Discharges, and Transfers
1200-08-15-.06	Basic Hospice Functions
1200-08-15-.07	Reserved
1200-08-15-.08	Building Standards
1200-08-15-.09	Life Safety
1200-08-15-.10	Infectious and Hazardous Waste
1200-08-15-.11	Records and Reports
1200-08-15-.12	Patient/Resident Rights
1200-08-15-.13	Policies and Procedures for Health Care - Decision Making
1200-08-15-.14	Disaster Preparedness
1200-08-15-.15	Appendix I

1200-08-15-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. An individual appointed by a governing body who is responsible for the day to day management of the hospice program.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Bereavement Counseling. Counseling services provided to the patient's or resident's family both prior to and after the patient's or resident's death.

(7) Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.

(8) Board. The Tennessee Board for Licensing Health Care Facilities.

(9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient or resident to make health care decisions while having the capacity to do so. A patient or resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient or resident shall have the burden of proving lack of capacity.

(10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient or resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or

(Rule 1200-08-15-.01, continued)

chemical agents intended to restore cardiac and/or respiratory functions in a patient or resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(13)~~(12)~~ Clinical Note. A written and dated notation containing a patient or_resident assessment, responses to medications, treatments and services, and/or any changes in condition signed by a health team member who made contact with the patient or resident.

(14)~~(13)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(15)~~(14)~~ Competent. A patient or resident who has capacity.

(16)~~(15)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(17)~~(16)~~ Department. The Tennessee Department of Health.

(18)~~(17)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(19)~~(18)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Diabetics Association pursuant to T.C.A. §63-25-204.

(20)~~(19)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(21)~~(20)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(22)~~(21)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(23)~~(22)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(24)~~(23)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(25)~~(24)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(26)~~(25)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(Rule 1200-08-15-.01, continued)

(27)~~(26)~~ Health Care Decision-maker. In the case of a patient or resident who lacks capacity, the patient's or resident's health care decision-maker is one of the following: the patient's or resident's health care agent as specified in an advance directive, the patient's or resident's court-appointed guardian or conservator with health care decision-making authority, the patient's or resident's surrogate as determined pursuant to Rule 1200-08-15-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(28)~~(27)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(29)~~(28)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(30)~~(29)~~ HIV Resident. An individual who is in need of domiciliary care and who has been diagnosed and certified in writing by a licensed physician as being HIV (human immunodeficiency virus) positive.

(31)~~(30)~~ Home Care Organization. As defined by T.C.A. § 68-11-201 "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(32)~~(31)~~ Home Health Aide/Hospice Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as an extension of therapy services, personal care regarding nutritional needs, ambulation and exercise.

(33)~~(32)~~ Hospice Care Clinical Coordinator. A person identified as being responsible for the clinical management of all aspects of a hospice program. The hospice clinical coordinator must have at least one (1) year of supervisory experience in hospice or home health care and be either a licensed physician or a registered nurse.

(34)~~(33)~~ Hospice Patient. An individual who:

(a) Has been diagnosed as terminally ill;

(b) Has been certified in writing by a physician to have an anticipated life expectancy of six (6) months or less; and,

(c) Has voluntarily requested admission to, and been accepted by a licensed hospice.

(35)~~(34)~~ Hospice Services. As defined by T.C.A. § 68-11-201, "hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week pursuant to the patient's Hospice plan of care. A licensed hospice may provide services to a non-hospice patient; provided, that services to a non-hospice patient shall be limited to palliative care only.

(36)~~(35)~~ Incompetent. A patient or resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(37)~~(36)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(Rule 1200-08-15-.01, continued)

(38)~~(37)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(39)~~(38)~~ Involuntary Transfer. The movement of a patient or resident without the consent of the resident, the resident's legal guardian, next of kin or representative, with required notification to the appropriate agencies.

(40)~~(39)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(41)~~(40)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(42)~~(41)~~ Licensed Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(43)~~(42)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(44)~~(43)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(45)~~(44)~~ Medical Director. A licensed physician employed by the residential hospice to be responsible for medical care in the facility.

(46)~~(45)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's or resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(47)~~(46)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, and other written electronics, or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients and residents.

(48)~~(47)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or resident or other medical or surgical treatments to achieve the expressed goals of the informed patient or resident. In the case of the incompetent patient or resident, the patient's or resident's representative expresses the goals of the patient or resident.

(49)~~(48)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by the residential hospice and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other organization personnel.

(Rule 1200-08-15-.01, continued)

(50)~~(49)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(51)~~(50)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(52)~~(51)~~ N.F.P.A. The National Fire Protection Association.

(53)~~(52)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(54)~~(53)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(55)~~(54)~~ Palliative. The reduction or abatement of pain or troubling symptoms by appropriate coordination of all elements of the hospice care team to achieve needed relief of distress.

(56)~~(55)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(57)~~(56)~~ Personally Informing. A communication by any effective means from the patient or resident directly to a health care provider.

(58)~~(57)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(59)~~(58)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(60)~~(59)~~ Physical Therapist Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(61)~~(60)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(62)~~(61)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(63)~~(62)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

(Rule 1200-08-15-.01, continued)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(64)~~(63)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(65)~~(64)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(66)~~(65)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's or resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(67)~~(66)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(68)~~(67)~~ Residential Hospice. A licensed homelike residential facility designed, staffed and organized to provide hospice and/or HIV care services, except such services shall be provided at such residential facility rather than the patient's or resident's regular or temporary place of residence. A residential hospice shall not provide hospice and/or HIV care services to any person other than a hospice and/or HIV resident.

(69)~~(68)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(70)~~(69)~~ Respiratory Therapy Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(71)~~(70)~~ Respite Care. A short-term period of inpatient care provided to a hospice patient only when necessary to relieve the family members or other persons caring for the patient.

(72)~~(71)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(73)~~(72)~~ Shall or Must. Compliance is mandatory.

(74)~~(73)~~ Social Worker. An individual who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has one (1) year of social work experience in a health care setting.

(75)~~(74)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

(Rule 1200-08-15-.01, continued)

~~(75) Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.~~

(76) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(77)~~(76)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that organization.

(78)~~(77)~~ State.A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(79)~~(78)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(80)~~(79)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(81)~~(80)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.

(82)~~(81)~~ Surrogate. An individual, other than a patient's or resident's agent or guardian, authorized to make a health care decision for the patient or resident.

(83)~~(82)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(84)~~(83)~~ Transfer. The movement of a patient or resident at the direction of a physician or other qualified medical personnel when a physician is not readily available, but does not include such movement of a patient or resident who leaves the facility against medical advice.

(85)~~(84)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient or resident.

(86)~~(85)~~ Volunteer. An individual who agrees to provide services to a hospice care patient or HIV resident and/or family member(s), without monetary compensation, with appropriate supervision by the facility.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed November 22, 2005; effective February 5, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-15-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any residential hospice without having a license. A

(Rule 1200-08-15-.05, continued)

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 20, 2006; effective July 4, 2006.*

1200-08-15-.06 BASIC HOSPICE FUNCTIONS.

(1) Core Functions. A residential hospice must ensure that substantially all core services are routinely provided directly by hospice employees. A residential hospice may use contracted staff if necessary to supplement residential hospice employees in order to meet the needs of patients and residents.

(a) Nursing services. The residential hospice must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of patients and residents are met.

2. Patient and resident care responsibilities of nursing personnel must be specified.

3. Hospice services and HIV care services must be provided in accordance with recognized standards of practice.

4. Nursing services include the authorization of a Registered Nurse to pronounce the death of a patient or resident.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions and HIV care, physician employees of the residential hospice including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the patients and residents to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the individual and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's or resident's death, as well as dietary, therapeutic, spiritual and may include any other counseling services identified in the plan of care for the individual and family provided while the individual is a patient or resident of the residential hospice.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided, and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice to patients as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the residential hospice.

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

(2) Plan of Care.

A written plan of care must be established and maintained for each individual admitted to a residential hospice, and the care provided to an individual must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(b) Review of plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services or hospice services required including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's or resident's and family's needs.

(3) Interdisciplinary Group.

The organization providing hospice services must designate an interdisciplinary group and groups composed of individuals who provide or supervise the care and services offered by the residential hospice:

(a) Composition of Group. The residential hospice must have an interdisciplinary group or groups that include at least the following individuals who are employees of the residential hospice:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

1. Participation in the establishment of the plan of care;

2. Provision or supervision of the quality of hospice care and services and/or HIV care services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care or HIV care; and

4. Establishing and maintaining policies governing the day-to-day provision of hospice care and services and/or HIV care and services.

(c) If a residential hospice has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in paragraph (b)(4) of this section.

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

(d) Coordinator. The residential hospice must designate a registered nurse to coordinate the implementation of the plan of care of each patient and/or resident.

(e) Volunteers. The residential hospice may use volunteers, in defined roles, under the supervision of a designated residential hospice employee.

1. Training. The residential hospice must provide appropriate orientation and training that is consistent with acceptable standards of residential hospice practice.

2. Role. Volunteers may be used in administrative or direct patient or resident care roles.

3. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

4. Availability of clergy. The residential hospice must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients or residents who request such visits and must advise patients and/or residents of this opportunity.

(4) Continuation of Care. A residential hospice must assist in coordinating continued care should the patient or resident be transferred or discharged from the residential hospice.

(5) Drug and Treatments. Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(6) Performance Improvement Program. The residential hospice must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and performance of the organization. The performance improvement program must be ongoing and have a written plan of implementation which assures that:

(a) All organized services related to resident care, including services furnished by a contractor, are evaluated;

(b) Nosocomial infections and medication therapy are evaluated;

(c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;

(d) The residential hospice must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its patients and/or HIV care residents;

(e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;

(f) Performance improvement program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;

(g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.

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

(7) Infection Control.

(a) The residential hospice must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an infection control committee, including the medical director and members of the nursing staff and administrative staff, develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient and/or resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient and/or resident equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator, the medical director and a registered nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) The facility shall develop policies and procedures for testing a patient's or resident's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's or resident's blood or other body fluid. The testing shall be performed at no charge to the patient or resident, and the test results shall be confidential.

(e) The facility and its employees shall adopt and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(f) Every residential hospice shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(g) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

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

(h) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient and resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(i) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for patients and/or residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.

(j) Laundry facilities located in the residential hospice shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(k) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the residential hospice or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.

(8) Hospice Aide Services. Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The hospice aide shall be assigned to a particular patient or resident by a registered nurse. Written instructions for patient or resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and

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

exercises, reporting changes in the patient's or resident's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member, shall monitor and assess the hospice aide's competence in providing care, relationships and determine whether goals are being met.

(c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as issues are identified.

~~(9) Physical therapy, occupational therapy, respiratory therapy and speech language pathology. Physical therapy services, occupational therapy services, respiratory therapy services and speech language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.~~

(9) Physical therapy, occupational therapy, respiratory therapy and speech language pathology.

(a) Physical therapy services, occupational therapy services, respiratory therapy services and speech language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(10) Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice, only by appropriately licensed employees of the hospice.

(b) The residential hospice must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the patient.

(c) Drugs and biologicals may be administered by the patient or resident or his/her family member if the patient's or resident's attending physician has approved.

(11) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every residential hospice patient and/or HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each clinical record is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual's record must contain:

1. The initial and subsequent assessments;

2. The plan of care;

3. Identification data;

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

4. Consent and authorization and election forms;

5. Pertinent medical history; and

6. Complete documentation of all services and events, including but not limited to evaluations, treatments and progress notes.

(b) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of patients or residents under mental disability or minority, their complete residential hospice records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient or resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the residential hospice's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the residential hospice discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. §§ 68-11-308). If a patient or resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient or resident when the residential hospice is directly involved in the transfer.

(d) The residential hospice must have a procedure for ensuring the confidentiality of patient and resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to, or alter, patient or resident records. Original medical records must be released by the facility only in accordance with federal and state laws.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

(f) All entries must be legible, complete, dated and authenticated according to facility policy.

(12) Pharmaceutical Services.

(a) The residential hospice shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.

(b) Test reagents, germicides, and disinfectants shall be stored separately from drugs, devices and related materials. External drugs and related materials must be stored separately from internal drugs, devices and related materials. All drugs, devices and related materials must be properly labeled. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons.

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

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every residential hospice shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the patient's or resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the patient or resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the patient or resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to residential hospice policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the patient or resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the patient or resident only on a written order by the physician. A notation of drugs released to the patient or resident shall be entered into the medical record. All unused prescriptions left in a residential hospice shall be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the residential hospice.

(13) Laboratory Services.

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

The residential hospice must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the patients and/or residents. The residential hospice must ensure that all laboratory services provided to its patients and/or residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14) Food and Dietetic Services.

(a) The residential hospice must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.

(b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of patients and/or residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.

(c) Menus must meet the needs of the patients and/or residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients and/or residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the patients and/or residents.

4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.

(d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients and/ or residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage, while being prepared and served, and/or transported through hallways.

(g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(h) Dishwashing machines shall be used according to manufacturer specifications.

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

(i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.

(m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed November 22, 2005; effective February 5, 2006. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-15-.07 RESERVED.

1200-08-15-.08 BUILDING STANDARDS.

(1) A residential hospice shall construct, arrange, and maintain the condition of the physical plant and the overall residential hospice environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All new facilities shall conform to the 2006 edition of the International Building Code, except for Chapter 11 pertaining to accessibility and except for Chapter 27 pertaining to electrical requirements; the 2006 edition of the International Mechanical Code; the 2006 edition of the International Plumbing Code; the; the 2006 edition of the International Fuel and Gas Code; the 2006 edition of the National Fire Protection Code (NFPA) NFPA 1 including Annex A which incorporates the 2006 edition of the Life Safety Code; the 2010 Guidelines for Design and Construction of Health Care Facilities; the 2005 edition of the National Electrical Code; and the 2005 edition of the U.S. Public Health Service Food Code as adopted by the Board for Licensing Health Care Facilities. The requirements of the 2004 Americans with Disabilities Act (A.D.A.), and the 1999 edition of North Carolina Handicap Accessibility Codes with 2004 amendments apply to all new facilities and to all existing facilities that are enlarged or substantially altered or repaired after July 1, 2006. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes and regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

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

CHAPTER 1200-08-26
STANDARDS FOR HOMECARE ORGANIZATIONS
PROVIDING HOME HEALTH SERVICES

TABLE OF CONTENTS

1200-08-26-.01	Definitions
1200-08-26-.02	Licensing Procedures
1200-08-26-.03	Disciplinary Procedures
1200-08-26-.04	Administration
1200-08-26-.05	Admissions, Discharge, and Transfers
1200-08-26-.06	Basic Agency Functions
1200-08-26-.07	Reserved
1200-08-26-.08	Reserved
1200-08-26-.09	Reserved
1200-08-26-.10	Infectious and Hazardous Waste
1200-08-26-.11	Records and Reports
1200-08-26-.12	Patient Rights
1200-08-26-.13	Policies and Procedures for Health Care Decision-Making
1200-08-26-.14	Disaster Preparedness
1200-08-26-.15	Appendix I

1200-08-26-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person who:

(a) Is a licensed physician with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agency. A Home Care Organization providing home health services.

(6) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) Board. The Tennessee Board for Licensing Health Care Facilities.

(8) Branch Office. A location or site from which a home care organization provides home health services within a portion of the total geographic area served by the licensed organization. The branch office is part of the home care organization providing home health services and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the requirements for licensing as a home care organization providing home health services. At all times a branch office must operate solely under the name of the licensed organization.

(Rule 1200-08-26-.01, continued)

(9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(13)~~(12)~~ Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(14)~~(13)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(15)~~(14)~~ Competent. A patient who has capacity.

(16)~~(15)~~ Department. The Tennessee Department of Health.

(17)~~(16)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(18)~~(17)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(19)~~(18)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(20)~~(19)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(21)~~(20)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(22)~~(21)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(Rule 1200-08-26-.01, continued)

(23)~~(22)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(24)~~(23)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(25)~~(24)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-26-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(26)~~(25)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(27)~~(26)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(28)~~(27)~~ Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(29)~~(28)~~ Home Health Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as extension of therapy services, personal care regarding nutritional needs, ambulation and exercise, and household services essential to health care at home.

(30)~~(29)~~ Home Health Service. As defined by T.C.A. § 68-11-201, "home health service" means a service provided an outpatient by an appropriately licensed health care professional or an appropriately qualified staff member of a licensed home care organization in accordance with orders recorded by a physician, and which includes one (1) or more of the following:

(a) Skilled nursing care including part-time or intermittent supervision;

(b) Physical, occupational or speech therapy;

(c) Medical social services;

(d) Home health aide services;

(e) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of or through the provision of, the services described in subparagraph (a) through (d) ; and

(f) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home care organization at a hospital, nursing home facility or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in the individual's home, or which are furnished at such facility while the

(Rule 1200-08-26-.01, continued)

individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

(g) Home health service does not include services provided in the home by a sole practice therapist, when such services are within the scope of the therapist's license and incidental to services provided by the sole practice therapist in the office. A sole practice therapist means a therapist licensed under Title 63, Chapter 13 or 17, who is in sole practice and not in a business arrangement with any other therapist or other healthcare provider. Sole practice therapists are not excluded from the requirements of professional support services.

(31)~~(30)~~ Homemaker Service. A non-skilled service in the home to maintain independent living which does not require a physician's order. An agency does not have to be licensed as a home care organization to provide such services.

(32)~~(31)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(33)~~(32)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(34)~~(33)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(35)~~(34)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(36)~~(35)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(37)~~(36)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(38)~~(37)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(39)~~(38)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients.

(40)~~(39)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by the home care organization and under the supervision of a certified master social worker or licensed clinical social worker, in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other organized personnel.

(41)~~(40)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical

(Rule 1200-08-26-.01, continued)

treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(42)~~(41)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(43)~~(42)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(44)~~(43)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(45)~~(44)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(46)~~(45)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

(47)~~(46)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(48)~~(47)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(49)~~(48)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(50)~~(49)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(51)~~(50)~~ Physician. A person currently licensed as such by the Tennessee Board of Medical Examinations or currently licensed by the Tennessee Board of Osteopathic Examination. For the purposes of defining "home health services" only, "physician" includes a podiatrist licensed under Title 63, Chapter 3, provided, that any home health service ordered is a follow-up to treatment provided to the patient by the podiatrist. A physician who is licensed to practice medicine, osteopathy or podiatry in a state contiguous to Tennessee may refer a patient residing in this state to a home care organization providing home health services duly licensed under this chapter; however, this shall not be construed as authorizing an unlicensed physician to practice medicine in violation of T.C.A. §§63-6-201, 63-9-104 or 63-3-204, and such a physician shall have previously provided treatment to that patient, and shall have had an ongoing physician-patient relationship with the person for whom the referral is to be made.

(52)~~(51)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(Rule 1200-08-26-.01, continued)

(53)~~(52)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(54)~~(53)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(55)~~(54)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(56)~~(55)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(57)~~(56)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(58)~~(57)~~ Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(59)~~(58)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(60)~~(59)~~ Shall or Must. Compliance is mandatory.

(61)~~(60)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

~~(61) Speech Therapist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.~~

(62) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(Rule 1200-08-26-.01, continued)

(63)~~(62)~~ State.A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(64)~~(63)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(65)~~(64)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(66)~~(65)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(67)~~(66)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(68)~~(67)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-26-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing home health services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic areas specified by the certificate of need or at the time of the original licensing. The name of the home care organization providing home health services shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organization providing home health services.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the Department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

(Rule 1200-08-26-.05, continued)

(4) Every person admitted for care or treatment to any agency covered by these rules shall be under the supervision of a physician, as defined in this chapter, who holds a license in good standing. The name of the patient's attending physician shall be recorded in the patient's medical record.

(5) The agency staff shall obtain the patient's written consent for home health services.

(6) The signed consent form shall be included with the patient's individual clinical record.

(7) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(8) No medication or treatment shall be provided to any patient of an agency except on the order of a physician or dentist lawfully authorized to give such an order.

(9) A medical record shall be developed and maintained for each patient admitted.

(10) A discharge plan and summary shall be completed on each patient.

(11) The agency must provide an effective discharge planning process that applies to all patients. The agency's discharge planning process, including discharge policies and procedures, must be in writing and must:

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission of any patient;

(c) Include the likelihood of a patient's capacity for self-care;

(d) Identify the patient's continuing physical, emotional, housekeeping, transportation, social and other needs;

(e) Involve the patient, the patient's family or individual acting on the patient's behalf, the physician, nursing and social work professionals and other appropriate staff, and must be documented in the patient's medical record; and

(f) Be conducted on an ongoing basis throughout the continuum of care. Coordination of services may involve promoting communication to facilitate family support, social work, nursing care, consultation, referral or other follow-up.

(12) The patient and family members or interested persons must be taught and/or counseled to prepare them for post-agency care.

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

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000.*

1200-08-26-.06 BASIC AGENCY FUNCTIONS.

(Rule 1200-08-26-.06, continued)

(1) An agency shall provide at least one of the qualifying home health services directly through agency employees, but may arrange with another licensed organization or health care professional to provide any additional home health services. Home health services provided under arrangements with another licensed home care organization or professional organization shall be subject to a written contract conforming with the requirements of this chapter.

(2) All personnel providing home health services shall assure that their efforts effectively complement one another and support the objectives outlined in the plan of care. The medical record or minutes of case conferences shall establish that effective interchange, reporting, and coordinated patient evaluation does occur. A written summary report for each patient shall be sent to the attending physician at least every sixty-two (62) days.

(3) Plan of Care.

(a) The written plan of care, developed in consultation with the organization staff, shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of services, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care which cannot be completed until after an evaluation visit, the physician shall be consulted to approve additions or modifications to the original plan. Orders for home health therapy services shall include the specific treatment or modalities to be used and their amount, frequency and duration. The therapist and other organization personnel shall participate in developing the plan of care.

(b) The total plan of care shall be reviewed by the attending physician and agency personnel involved in the patient's care as often as the severity of the patient's condition requires, but at least once every sixty-two (62) days. Evidence of review by the physician must include the physician's signature and date of the review on the plan of care. A facsimile of the physician's signature is acceptable. Professional staff shall promptly alert the physician to any changes that suggest a need to alter the plan of care.

(4) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(5) Skilled Nursing Services.

(a) The agency shall provide skilled nursing services by or under the supervision of a registered nurse who has no current disciplinary action against his/her license, in accordance with the plan of care. This person shall be available at all times during operating hours and participate in all activities relevant to the professional home health services provided, including the development of qualifications and assignment of personnel.

(b) The registered nurse's duties shall include but are not limited to the following: make the initial evaluation visit, except in those circumstances where the physician has ordered therapy services as the only skilled service; regularly evaluate the patient's nursing needs; initiate the plan of care and necessary revisions; provide those services requiring substantial specialized nursing skill; initiate appropriate preventive and rehabilitative nursing procedures; prepare clinical and progress notes; coordinate

(Rule 1200-08-26-.06, continued)

services; inform the physician and other personnel of changes in the patient's condition and needs; counsel the patient and family in meeting nursing and related needs; participate in in-service programs; supervise and teach other nursing personnel. The registered nurse or appropriate agency staff shall initially and periodically evaluate drug interactions, duplicative drug therapy and non-compliance to drug therapy.

(c) The licensed practical nurse shall provide services in accordance with agency policies, which may include but are not limited to the following: prepare clinical and progress notes; assist the physician and/or registered nurse in performing specialized procedures; prepare equipment and materials for treatments; observe aseptic technique as required; and assist the patient in learning appropriate self-care techniques.

(d) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. The deceased was receiving the services of a licensed home care organization;

2. The death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;

3. The nurse is licensed by the state; and

4. The nurse is employed by the home care organization providing services to the deceased.

(6) Therapy Services.

(a) All therapy services offered by the agency directly or under arrangement shall be planned, delegated, supervised or provided by a qualified therapist in accordance with the plan of care. A qualified therapist assistant may provide therapy services under the supervision of a qualified therapist in accordance with the plan of care. The therapist shall assist the physician in evaluating the level of function, helping develop the plan of care (revising as necessary), preparing clinical and progress notes, advising and consulting with the family and other agency personnel, and participating in in-service programs.

~~(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist or audiologist in good standing.~~

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c) A qualified therapist may make the initial evaluation visit when therapy is the only skilled service ordered.

(7) Home Health Aide Services.

(a) Aides shall be selected on the basis of such factors as: a sympathetic attitude toward the care of the sick; the ability to read, write and carry out directions; and the maturity and ability to deal effectively with the demands of the job. Aides shall be formally and carefully trained in: methods of assisting patients to achieve maximum self-reliance in

(Rule 1200-08-26-.06, continued)

nutrition and meal preparation; the aging process and emotional problems of illness; procedures for maintaining a clean, healthy and pleasant environment; changes in a patient's condition that should be reported; work of the agency and the health team; ethics; confidentiality; respect for human dignity and the awareness of individual differences; and record keeping. Any home health aide training programs must comply with the federal home health aide training and competency regulations. Copies of these regulations may be obtained from the department.

(b) The home health aide shall be assigned to a particular patient by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(c) The registered nurse, or appropriate professional staff member if other home health services are provided, shall make a supervisory visit to the patient's residence at least monthly, either when the aide is present to observe and assist or when the aide is absent (preferably alternating visits), to assess the aide's competence in providing care and determine whether goals are being met.

(d) There shall be continuing in-service programs on a regularly scheduled basis with on-the-job training during supervisor visits and more often as needed.

(8) Medical Social Services, when provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social work assistant employed by the agency and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other agency personnel.

(9) Performance Improvement.

(a) An agency shall have a committee to review, at least annually, past and present home health services including contract services, in accordance with a written plan, to determine their appropriateness and effectiveness and to ascertain that professional policies are followed in providing these services.

(b) The objectives of the review committee shall be:

1. To assist the agency in using its personnel and facilities to meet individual and community needs;

2. To identify and correct deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

3. To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

(Rule 1200-08-26-.06, continued)

4. To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of patient care;

5. To augment in-service staff education;

6. To provide data needed to satisfy state licensure and certification requirements;

7. To establish criteria to measure the effectiveness and efficiency of the home health services provided to patients; and

8. To develop a record review system for the agency to evaluate the necessity or appropriateness of the home health services provided and their effectiveness and efficiency.

(10) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies.

(c) Continuing education shall be provided for all agency patient care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) The agency shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(e) The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(f) Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(11) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every patient receiving home health services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(Rule 1200-08-26-.06, continued)

(b) A home care organization providing home health services is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of patients under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(d) Even if the agency discontinues operations, records shall be maintained as mandated by this chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a patient is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient when the agency is directly involved in the transfer.

(e) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. The patient's written consent shall be required for release of information when the release is not otherwise authorized by law.

(f) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-260 and 68-11-304.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed February 23, 2007; effective May 9, 2007.*

1200-08-26-.07 RESERVED.

1200-08-26-.08 RESERVED.

1200-08-26-.09 RESERVED.

1200-08-26-.10 INFECTIOUS AND HAZARDOUS WASTE.

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

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

CHAPTER 1200-08-27
STANDARDS FOR HOMECARE ORGANIZATIONS
PROVIDING HOSPICE SERVICES

TABLE OF CONTENTS

1200-08-27-.01	Definitions	1200-08-27-.09	Reserved
1200-08-27-.02	Licensing Procedures	1200-08-27-.10	Infectious and Hazardous Waste
1200-08-27-.03	Disciplinary Procedures	1200-08-27-.11	Records and Reports
1200-08-27-.04	Administration	1200-08-27-.12	Patient Rights
1200-08-27-.05	Admissions, Discharges and Transfers	1200-08-27-.13	Policies and Procedures for Health Care - Decision Making
1200-08-27-.06	Basic Agency Functions	1200-08-27-.14	Disaster Preparedness
1200-08-27-.07	Reserved	1200-08-27-.15	Appendix I
1200-08-27-.08	Reserved		

1200-08-27-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person who:

(a) Is a licensed physician with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Agency. A Home Care Organization providing hospice services.

(7) Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care or specialized training or experience in bereavement theory and counseling.

(8) Board. The Tennessee Board for Licensing Health Care Facilities.

(9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the

(Rule 1200-08-27-.01, continued)

capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(13)~~(12)~~ Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(14)~~(13)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(15)~~(14)~~ Competent. A patient who has capacity.

(16)~~(15)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(17)~~(16)~~ Department. The Tennessee Department of Health.

(18)~~(17)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(19)~~(18)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(20)~~(19)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(21)~~(20)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(22)~~(21)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(23)~~(22)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(Rule 1200-08-27-.01, continued)

(24)~~(23)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(25)~~(24)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(26)~~(25)~~ Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-27-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(27)~~(26)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(28)~~(27)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(29)~~(28)~~ Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(30)~~(29)~~ Home Health Aide/Hospice Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as an extension of therapy services, personal care regarding nutritional needs, ambulation and exercise, and household services essential to health care at home.

(31)~~(30)~~ Homemaker Service. A non-skilled service in the home to maintain independent living which does not require a physician's order. An agency does not have to be licensed as a home care organization to provide such services.

(32)~~(31)~~ Hospice Services. As defined by T.C.A. § 68-11-201, hospice services means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week pursuant to the patient's Hospice plan of care. A licensed hospice services program may provide services to a non-hospice patient; provided, that services to a non-hospice patient shall be limited to palliative care only.

(33)~~(32)~~ Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(34)~~(33)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(35)~~(34)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(Rule 1200-08-27-.01, continued)

(36)~~(35)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(37)~~(36)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(38)~~(37)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(39)~~(38)~~ Life Threatening or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(40)~~(39)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to patients.

(41)~~(40)~~ Medical Social Services. Medical social services must be provided by a qualified social worker under the direction of a physician, in accordance with the plan of care.

(42)~~(41)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(43)~~(42)~~ Misappropriation of patient/resident property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(44)~~(43)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(45)~~(44)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(46)~~(45)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(47)~~(46)~~ Palliative. The reduction or abatement of pain or troubling symptoms, by appropriate coordination of all elements of the hospice care team, to achieve needed relief of distress.

(48)~~(47)~~ Patient. Hospice patient means only a person who has been diagnosed as terminally ill; been certified by a physician in writing to have an anticipated life expectancy of six (6) months or less; has voluntarily though self or a surrogate requested admission to a hospice; and been accepted by a licensed hospice. Patient will also include a non-hospice patient receiving only palliative care.

(49)~~(48)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(Rule 1200-08-27-.01, continued)

(50)~~(49)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(51)~~(50)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(52)~~(51)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(53)~~(52)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(54)~~(53)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(55)~~(54)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(56)~~(55)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(57)~~(56)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(58)~~(57)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(59)~~(58)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(60)~~(59)~~ Respiratory Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(61)~~(60)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(Rule 1200-08-27-.01, continued)

(62)~~(61)~~ Respite Care. A short-term period of inpatient care provided to the patient only when necessary to relieve the family members or other persons caring for the patient.

(63)~~(62)~~ Shall or Must. Compliance is mandatory.

(64)~~(63)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

~~(64) Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.~~

(65) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(66)~~(65)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that religious organization.

(67)~~(66)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(68)~~(67)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board or equivalent body.

(69)~~(68)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(70)~~(69)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(71)~~(70)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(72)~~(71)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(73)~~(72)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

(74)~~(73)~~ Volunteer. An individual who agrees to provide services to a hospice care patient and/or family member(s), without monetary compensation, in either direct patient care or an administrative role and supervised by an appropriate hospice care employee.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed April 11, 2003; effective June 25, 2003.*

(Rule 1200-08-27-.01, continued)
Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.

1200-08-27-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing hospice services without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure and for the geographic area specified by the certificate of need or at the time of the original licensing. The name of the home care organization providing hospice services shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organizations providing hospice services.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the Department.

(b) Each applicant for a license shall pay an annual license fee in the amount of one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department. Patients shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the agency.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the home care agency providing hospice services to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership, including a change in a controlling interest, must be reported to the Department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the Department before the license may be issued.

(a) For the purposes of licensing, the licensee of an agency has the ultimate responsibility for the operation of the agency, including the final authority to make or control operational decisions and legal responsibility for the business management. A change

(Rule 1200-08-27-.05, continued)

(4) The agency staff shall determine if the patient's needs can be met by the organization's services and capabilities.

(5) Every person admitted for care or treatment to any agency covered by these rules shall be under the supervision of a physician as defined in this chapter who holds a license in good standing. The name of the patient's attending physician shall be recorded in the patient's medical record.

(6) The agency staff shall obtain the patient's written consent for hospice services.

(7) The signed consent form shall be included with the patient's individual clinical record.

(8) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(9) No medication or treatment shall be provided to any patient of an agency except on the order of a physician or dentist lawfully authorized to give such an order.

(10) A medical record shall be developed and maintained for each patient admitted.

(11) No patient shall be involuntarily discharged without a written order from the attending physician or the medical director stating the patient does not meet hospice criteria, or through other legal processes, and timely notification of next of kin and/or the authorized representative.

(12) When a patient is discharged, a summary of the significant findings and events of the patient's care, the patient's condition on discharge and the recommendation and arrangement for future care, if any, is required.

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

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed December 23, 2009; effective March 23, 2010.*

1200-08-27-.06 BASIC AGENCY FUNCTIONS.

(1) An organization providing hospice services must ensure that substantially all core services are routinely provided directly by hospice employees. The hospice services program may contract for physician services. The hospice services program may use contracted staff for nursing services, medical social services, and counseling services if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice services program must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of the individuals and services meet the requirements specified in this rule.

(a) Nursing services. The hospice service program must provide nursing care and services by or under the supervision of a registered nurse (R.N.) at all times.

(Rule 1200-08-27-.06, continued)

1. Nursing services must be directed and staffed to assure the nursing needs of patients are met.

2. Patient care responsibilities of nursing personnel must be specified.

3. Hospice services must be provided in accordance with recognized standards of practice.

4. A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

   (i) The deceased was receiving the services of a licensed home care organization providing Medicare-certified hospice services;

   (ii) Death was anticipated, and the attending physician and/or the hospice medical director has agreed in writing to sign the death certificate. Such agreement must be present with the deceased at the place of death;

   (iii) The nurse is licensed by the state; and,

   (iv) The nurse is employed by the home care organization providing hospice services to the deceased.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice service program, including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the patients to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the patient and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the Plan of Care for the patient and family.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the hospice program.

(2) Plan of Care. A written plan of care must be established and maintained for each patient admitted to a hospice program and the care provided must be in accordance with the plan.

(Rule 1200-08-27-.06, continued)

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(b) Review of Plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the hospice services required, including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's and family's needs.

(3) Interdisciplinary Group. The organization providing hospice services must designate an interdisciplinary group(s) composed of individuals who provide or supervise the care and services offered by the hospice program:

(a) Composition of Group. The hospice service program must have an interdisciplinary group or groups that include at least the following individuals who are employees of the hospice service program:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

1. Participation in the establishment of the plan of care;

2. Provision or supervision of hospice care and services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care; and

4. Establishment of policies governing the day-to-day provision of hospice care and services.

(c) If a hospice service program has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in part (b) of this paragraph.

(4) Coordinator. The hospice service program must designate a registered nurse to coordinate the implementation of the plan of care of each patient.

(5) Volunteers. The hospice service program may use volunteers, in defined roles, under the supervision of a designated hospice program employee.

(a) Training. The hospice program must provide appropriate orientation and training that is consistent with acceptable standards of hospice practice.

(Rule 1200-08-27-.06, continued)

(b) Role. Volunteers may be used in administrative or direct patient care roles.

1. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

2. Availability of clergy. The hospice service program must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients who request such visits and must advise patients of this opportunity.

(6) Continuation of Care. An organization providing hospice services must assist in coordinating continued care should the patient be transferred or discharged from the hospice program or the organization.

(7) Short Term Inpatient Care. Short term inpatient care is available for pain control, symptom management and respite services, and if not provided directly, must be provided under a legally binding written agreement that meets the requirements of subparagraph (b) of this paragraph in a licensed nursing home, hospital, or residential hospice which meets the following minimum requirements:

(a) Whether provided directly or indirectly, the facility that provides short term inpatient care must provide twenty-four (24) hour nursing services which are sufficient to meet total nursing needs in accordance with the patient's plan of care. Each hospice patient must receive treatments, medications, and diet as prescribed, and must be kept comfortable, clean, well-groomed and protected from accident, injury and infection. Each shift must include a registered nurse (R.N.) who provides direct patient care.

1. Respite services shall be staffed in accordance with the patient's Hospice Plan of Care.

2. The Hospice Plan of Care will state whether a registered nurse is required to provide direct care to the hospice patient.

3. Respite services may be provided in an Assisted Care Living Facility so long as the provisions of Rule 1200-08-27-.06 (7)(b)-(g) are met.

(b) The facility must be designed and equipped for the comfort and privacy of each hospice patient and family member(s) by providing physical space for private patient/family visiting, accommodations for family members to remain with the patient throughout the night, accommodations for family privacy following a patient's death and decor which is home-like in design and function.

(c) The hospice must furnish to the inpatient provider a copy of the patient's plan of care and specify the inpatient services to be furnished.

(d) The inpatient provider must have established policies consistent with those of the hospice and agree to abide by the patient care protocols established by the hospice for its patients.

(e) The medical record must include a record of all inpatient services and events. A copy of the discharge summary must be provided to the hospice and, if requested, a copy of the medical record is to be provided to the hospice.

(f) The written agreement must designate the party responsible for the implementation of the provisions of the agreement.

(Rule 1200-08-27-.06, continued)

(g) The hospice shall retain responsibility for appropriate hospice care training of the personnel who provide the care under the agreement.

(8) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(9) Performance Improvement Program. Each agency must conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of past and present care provided, including inpatient care and contract services. The written performance improvement plan findings are to be used by the hospice to determine the appropriateness and effectiveness of the care provided and to ascertain that professional policies are followed in providing these services. The objectives of those responsible for the performance improvement program are as follows:

(a) To assist the agency in using its personnel and facilities to meet individual and community needs;

(b) To identify and correct problems and/or deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

(c) To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

(d) To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of patient care;

(e) To provide data needed to satisfy state licensure and federal certification requirements; and

(f) To establish criteria to measure the effectiveness and efficiency of the hospice services provided to patients.

(10) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies.

(c) Continuing education shall be provided for all agency patient care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) The agency shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider

(Rule 1200-08-27-.06, continued)

rendering services at the agency is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(e) The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(f) Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(11) Home Health Aide/Hospice Aide Services. Home Health Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The home health aide shall be assigned to a particular patient by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member if other home health services are provided, shall make a supervisory visit to the patient's residence at least monthly, either when the aide is present to observe and assist or when the aide is absent (preferably alternating visits), to assess the aide's competence in providing care and determine whether goals are being met.

(c) There shall be continuing in-service programs on a regularly scheduled basis with on-the-job training during supervisor visits as issues are identified.

(12) Physical Therapy, Occupational Therapy and Speech Language Pathology Services. Physical therapy services, occupational therapy services, and speech language pathology services must be available and when provided, offered in a manner consistent with accepted standards of practice.

(13) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(14)~~(13)~~ Medical Supplies. Medical supplies and appliances, including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the hospice.

(b) The hospice must have a policy for the disposal of controlled drugs maintained in the patient's home or temporary place of residence when those drugs are no longer needed by the patient.

(c) Drugs and biologicals may be administered by the patient or his/her family member if the patient's attending physician has approved.

(Rule 1200-08-27-.06, continued)

(15)~~(14)~~ Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every patient receiving hospice services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; and signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) A home care organization providing hospice services is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of patients under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(d) Even if the agency discontinues operations, records shall be maintained as mandated by this Chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a patient is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient when the agency is directly involved in the transfer.

(e) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. The patient's written consent shall be required for release of information when the release is not otherwise authorized by law.

(f) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-260, and 68-11-304.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed September 13, 2002; effective November 27, 2002 Amendment filed February 23, 2007; effective May 9, 2007. Amendments filed March 27, 2015; effective June 25, 2015.*

1200-08-27-.07 RESERVED.

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

CHAPTER 1200-08-28
STANDARDS FOR HIV SUPPORTIVE LIVING CENTERS

TABLE OF CONTENTS

1200-08-28-.01	Definitions
1200-08-28-.02	Licensing Procedures
1200-08-28-.03	Disciplinary Procedures
1200-08-28-.04	Administration
1200-08-28-.05	Admissions, Discharges, and Transfers
1200-08-28-.06	Basic HIV Supportive Living Facility Functions
1200-08-28-.07	Reserved
1200-08-28-.08	Building Standards
1200-08-28-.09	Life Safety
1200-08-28-.10	Infectious and Hazardous Waste
1200-08-28-.11	Records and Reports
1200-08-28-.12	Resident Rights
1200-08-28-.13	Policies and Procedures for Health Care Decision-Making
1200-08-28-.14	Disaster Preparedness
1200-08-28-.15	Appendix I

1200-08-28-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. An individual appointed by a governing body who is responsible for the day to day management of the HIV Supportive Living Facility.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Bereavement Counseling. Counseling services provided to the individual's family and/or significant other both prior to and after the individual's death.

(7) Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.

(8) Board. The Tennessee Board for Licensing Health Care Facilities.

(9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual

(Rule 1200-08-28-.01, continued)

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

(11) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(12) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(13)~~(12)~~ Clinical Note. A written and dated notation containing a resident assessment, responses to medications, treatments and services and/or any changes in condition signed by a health professional who made contact with the resident, family or significant other.

(14)~~(13)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(15)~~(14)~~ Competent. A resident who has capacity.

(16)~~(15)~~ Core Services. Services consisting of nursing, medical social services, physician services and counseling services.

(17)~~(16)~~ Department. The Tennessee Department of Health.

(18)~~(17)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(19)~~(18)~~ Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners.

(20)~~(19)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(21)~~(20)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(22)~~(21)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(23)~~(22)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(24)~~(23)~~ Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(25)~~(24)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(26)~~(25)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(Rule 1200-08-28-.01, continued)

(27)~~(26)~~ Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-28-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(28)~~(27)~~ Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(29)~~(28)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(30)~~(29)~~ Home Care Organization. As defined by T.C.A. § 68-11-201 "home care organizations" provides home health services, home medical equipment services or hospice services to residents on an outpatient basis in either their regular or temporary place of residence.

(31)~~(30)~~ Hospice Services. As defined by T.C.A. §68-11-201, "hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week.

(32)~~(31)~~ Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(33)~~(32)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(34)~~(33)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(35)~~(34)~~ Involuntary Transfer. The movement of a resident without the consent of the resident, the resident's legal guardian, next of kin or representative, with required notification to the appropriate agencies.

(36)~~(35)~~ Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(37)~~(36)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(38)~~(37)~~ Licensed Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(39)~~(38)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(40)~~(39)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(41)~~(40)~~ Medical Director. A licensed physician employed by the HIV supportive living facility to be responsible for medical care in the facility.

(Rule 1200-08-28-.01, continued)

(42)~~(41)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(43)~~(42)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

(44)~~(43)~~ Medical Social Services. When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by a home care organization or by contract with the facility and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and inservice programs, and act as a consultant to other organization personnel.

(45)~~(44)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(46)~~(45)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(47)~~(46)~~ N.F.P.A. The National Fire Protection Association.

(48)~~(47)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(49)~~(48)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(50)~~(49)~~ Palliative. The reduction or abatement of pain or troubling symptoms by appropriate coordination of all elements of the health care team to achieve needed relief of distress.

(51)~~(50)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(52)~~(51)~~ Personal Care Aide. A nursing assistant or a person who can demonstrate through other education or experience that he or she is qualified to provide assistance with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication prompting, exercising and other household services essential to health care.

(53)~~(52)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(Rule 1200-08-28-.01, continued)

(54)~~(53)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(55)~~(54)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(56)~~(55)~~ Physical Therapist Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(57)~~(56)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(58)~~(57)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(59)~~(58)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(60)~~(59)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(61)~~(60)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(62)~~(61)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(63)~~(62)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(64)~~(63)~~ Resident. An individual who has been diagnosed with symptomatic HIV (human immunodeficiency virus) disease, who has a physician who acts as the primary care provider, and who has voluntarily requested admission to, and been accepted by a licensed residential facility.

(Rule 1200-08-28-.01, continued)

(65)~~(64)~~ Resident File. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, and other written electronics, or graphic data prepared, kept, made or maintained in the facility that pertains to confinement or services rendered to residents.

(66)~~(65)~~ Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(67)~~(66)~~ Respiratory Therapy Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.

(68)~~(67)~~ Respite Care. A short-term period of inpatient care provided to a hospice patient only when necessary to relieve the family members or other persons caring for the patient.

(69)~~(68)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(70)~~(69)~~ Shall or Must. Compliance is mandatory.

(71)~~(70)~~ Social Worker. An individual who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has one (1) year of social work experience in a health care setting.

(72)~~(71)~~ Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

~~(72) Speech Language Pathologist. A person currently licensed as such by The Tennessee Board of Communication Disorders and Sciences.~~

(73) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(74)~~(73)~~ Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that organization.

(75)~~(74)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(76)~~(75)~~ Student. A person currently enrolled in an accredited course of study that is approved by the appropriate licensing board or equivalent body.

(77)~~(76)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(78)~~(77)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.

(Rule 1200-08-28-.01, continued)

(79)~~(78)~~ Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(80)~~(79)~~ Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.

(81)~~(80)~~ Transfer. The movement of a resident at the direction of a physician or other qualified or certified professionals when a physician is not readily available, but does not include such movement of a resident who leaves the facility against medical advice.

(82)~~(81)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

(83)~~(82)~~ Volunteer. An individual who agrees to provide services to a resident, staff, significant other and/or family member(s), without monetary compensation, with appropriate supervision by the facility.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-28-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any HIV supportive living center without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure at the time of the original licensing. The name of the HIV supportive living center shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the HIV supportive living center.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:

1.	Less than 25 beds	$ 800.00
2.	25 to 49 beds, inclusive	$ 1,000.00
3.	50 to 74 beds, inclusive	$1,200.00
4.	75 to 99 beds, inclusive	$1,400.00
5.	100 to 124 beds, inclusive	$ 1,600.00
6.	125 to 149 beds, inclusive	$ 1,800.00

(Rule 1200-08-28-.05, continued)

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and,

5. Communicating with families and other persons interested in the resident.

(18) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006.*

1200-08-28-.06 BASIC HIV SUPPORTIVE LIVING FACILITY FUNCTIONS.

(1) A HIV supportive living facility must ensure that substantially all core services are routinely provided directly by HIV supportive living facility employees. A HIV supportive living facility may use contracted staff if necessary to supplement HIV supportive living facility employees in order to meet the needs of residents.

(a) Nursing services. The HIV supportive living facility must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of residents are met.

2. Resident care responsibilities of nursing personnel must be specified.

3. HIV care services must be provided in accordance with recognized standards of practice.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of HIV care, physician employees of the HIV supportive living facility including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the residents to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to the individual, the individual's family and/or significant other, and staff. Counseling includes bereavement counseling, provided both prior to and after the resident's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the plan of care for the individual and family and/or significant other while the individual is a resident of the HIV supportive living facility.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family/significant other needs, services to be provided, and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

(Rule 1200-08-28-.06, continued)

3. Spiritual counseling. Spiritual counseling must include notice to residents as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the HIV supportive living facility.

(2) Plan of Care. A written plan of care must be established and maintained for each individual admitted to a HIV supportive living facility, and the care provided to an individual must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(b) Review of plan. The plan must be reviewed and updated as the resident's condition changes, but at intervals of no more than (14) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services required including the management of discomfort and symptom relief It must state in detail the scope and frequency of services needed to meet the resident's and family's/significant other's needs.

(d) Coordinator. The HIV supportive living facility must designate a licensed professional nurse to coordinate the implementation of the plan of care of each resident.

(e) Volunteers. The HIV supportive living facility may use volunteers, in defined roles, under the supervision of a designated HIV supportive living facility employee.

1. Training. The HIV supportive living facility must provide appropriate orientation and training that is consistent with acceptable standards of HIV supportive living facility practice.

2. Role. Volunteers shall be used in administrative or direct resident care roles.

3. Recruiting and retaining. The HIV supportive living facility must document active and ongoing efforts to recruit and train volunteers.

4. Availability of clergy. The HIV supportive living facility must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to residents who request such visits and must advise residents of this opportunity.

(3) Continuation of Care. A HIV supportive living facility must assist in coordinating continued care should the resident be transferred or discharged from the HIV supportive living facility.

(4) Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician within ten (10) days of issuance of the oral order.

(5) Performance Improvement Program. The HIV supportive living facility must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and

(Rule 1200-08-28-.06, continued)

performance of the organization. The administrator shall assure that a Performance Improvement Committee, composed of a physician, a licensed professional nurse, a social worker and a pastoral or other counselor, is in place to ensure that the facility has adequate policies and procedures in place, to review performance monitoring and activities, and to provide oversight and address identified care issues within the facility. The performance improvement program must be ongoing and have a written plan of implementation which assures that:

(a) All organized services related to resident care, including services furnished by a contractor, are evaluated;

(b) Nosocomial infections and medication therapy are evaluated;

(c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;

(d) The HIV supportive living facility must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its HIV care residents;

(e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;

(f) Performance Improvement Program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;

(g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.

(6) Infection Control.

(a) The HIV supportive living facility must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an Infection Control Committee, including the medical director and members of the nursing staff and administrative staff, develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

(Rule 1200-08-28-.06, continued)

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident equipment and supplies; and

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator, the medical director and a licensed professional nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) The facility shall develop policies and procedures for testing a resident's blood for the presence of blood borne infections in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.

(e) The facility and its employees shall adopt appropriate policies to evaluate staff for exposure to blood-borne pathogens, and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(f) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents, decontamination and preparation areas shall be separated.

(g) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(h) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.

(i) Laundry facilities located in the HIV supportive living facility shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and

(Rule 1200-08-28-.06, continued)

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(j) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the HIV supportive living facility or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.

(7) Personal Care Services. Aide services must be available and adequate in frequency to meet the needs of the residents.

(a) The personal care aide shall be assigned to a particular resident by a licensed professional nurse. Written instructions for resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures to assist residents with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication prompting, reporting changes in the resident's condition and needs, completing appropriate records, exercising and other household services essential to health care.

(b) The registered nurse shall monitor and assess the aide's competence in providing care and determine whether goals are being met.

(c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as needed.

(8) Physical therapy, occupational therapy, respiratory therapy and speech language pathology. Physical therapy services, occupational therapy services, respiratory therapy services and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(9) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(10)~~(9)~~ Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of HIV or conditions directly attributable to the HIV diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the HIV supportive living facility.

(b) The HIV supportive living facility must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the resident.

(Rule 1200-08-28-.06, continued)

(c) Drugs and biologicals may be administered by the resident or a family member or significant other if the resident's attending physician has approved.

(11)~~(10)~~ Resident File.

(a) A resident file containing past and current findings in accordance with accepted professional standards shall be maintained for every HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each file is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the HIV supportive living facility. Each individual's record must contain:

1. The initial and subsequent assessments;

2. The plan of care;

3. Identification data;

4. Consent and authorization and election forms;

5. Pertinent medical history; and

6. Complete documentation of all services, volunteers and events (including evaluations, treatments, progress notes, etc.).

(b) All resident records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete HIV supportive living facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the HIV supportive living facility's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the HIV supportive living facility discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. §§ 68-11-308). If a resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the resident when the HIV supportive living facility is directly involved in the transfer.

(d) The HIV supportive living facility must have a procedure for ensuring the confidentiality of resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized, individuals cannot gain access to, or alter, resident records. Original resident records must be released by the facility only in accordance with federal and state laws.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided

(Rule 1200-08-28-.06, continued)

that such person has adopted same as his or her signature in accordance with established protocol or rules.

(f) All entries must be legible, complete, dated and authenticated according to facility policy.

(12)~~(11)~~ Pharmaceutical Services.

(a) The HIV supportive living facility shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every HIV supportive living facility shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to HIV supportive living facility policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(Rule 1200-08-28-.06, continued)

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a HIV supportive living facility must by destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the HIV supportive living facility.

(13)~~(12)~~ Laboratory Services. The HIV supportive living facility must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The HIV supportive living facility must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14)~~(13)~~ Food and Dietetic Services.

(a) The HIV supportive living facility must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.

(b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.

(c) Menus must meet the needs of the residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.

(d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(Rule 1200-08-28-.06, continued)

(e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination0 whether in storage or while being prepared and served and/or transported through hallways.

(g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(h) Dishwashing machines shall be used according to manufacturer specifications.

(i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current U.S. Public Health Service Sanitation Manual.

(k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.

(m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current U.S. Public Health Service Sanitation Manual should be used as a guide to food sanitation.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000.*

1200-08-28-.07 RESERVED.

1200-08-28-.08 BUILDING STANDARDS.

(1) An HIV supportive living facility shall construct, arrange, and maintain the condition of the physical plant and the overall HIV supportive living facility environment in such a manner that the safety and well-being of the residents are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All new facilities shall conform to the 2006 edition of the International Building Code, except for Chapter 11 pertaining to accessibility and except for Chapter 27 pertaining to electrical requirements; the 2006 edition of the International Mechanical Code; the 2006 edition of the International Plumbing Code; the 2006 edition of the International Fuel and Gas Code; the 2006 edition of the National Fire Protection Code (NFPA) NFPA 1 including Annex A which incorporates the 2006 edition of

RULES
OF
DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-34
STANDARDS FOR HOME CARE ORGANIZATIONS
PROVIDING PROFESSIONAL SUPPORT SERVICES

TABLE OF CONTENTS

1200-08-34-.01	Definitions
1200-08-34-.02	Licensing Procedures
1200-08-34-.03	Disciplinary Procedures
1200-08-34-.04	Administration
1200-08-34-.05	Admissions, Discharges, and Transfers
1200-08-34-.06	Basic Agency Functions
1200-08-34-.07	Reserved
1200-08-34-.08	Reserved
1200-08-34-.09	Reserved
1200-08-34-.10	Infectious and Hazardous Waste
1200-08-34-.11	Records and Reports
1200-08-34-.12	Consumer Rights
1200-08-34-.13	Policies and Procedures for Health Care Decision-Making
1200-08-34-.14	Reserved
1200-08-34-.15	Appendix I

1200-08-34-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person who establishes policies and procedures and is responsible for the activities of the agency and its staff. This person may be a physician, registered nurse, therapist, or a person with at least one (1) year experience in a health or disability related field. The administrator of a home care organization may serve as both a home health agency and professional support service agency administrator if both agencies are owned by the same corporation or legal entity.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agency. A home care organization providing professional support services.

(6) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) Board. The Tennessee Board for Licensing Health Care Facilities.

(8) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a consumer to make health care decisions while having the capacity to do so. A consumer shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a consumer shall have the burden of proving lack of capacity.

(9) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(Rule 1200-08-34-.01, continued)

(10)~~(9)~~ Clinical Note. A written and dated notation containing a consumer assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the consumer.

(11)~~(10)~~ Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12)~~(11)~~ Competent. A consumer who has capacity.

(13)~~(12)~~ Comprehensive Nursing assessment. An assessment conducted by a registered nurse which consists of four parts: completion of a Physical Status Review (PSR); consumer and family history; identification of health concerns, functional abilities, activities of daily living; and, completion of a head to toe physical assessment.

(14)~~(13)~~ Consumer. Any person with a primary diagnosis of mental retardation or developmental disability served through the Division of Mental Retardation Services or the Department of Mental Health and Developmental Disabilities in need of nursing, occupational, physical or speech therapy through a professional support service agency.

(15)~~(14)~~ Department. The Tennessee Department of Health.

(16)~~(15)~~ Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(17)~~(16)~~ Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(18)~~(17)~~ Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(19)~~(18)~~ Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(20)~~(19)~~ Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(21)~~(20)~~ Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(22)~~(21)~~ Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. §32-11-103(5).

(23)~~(22)~~ Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(24)~~(23)~~ Health Care Decision-maker. In the case of a consumer who lacks capacity, the consumer's health care decision-maker is one of the following: the consumer's health care agent as specified in an advance directive, the consumer's court-appointed guardian or conservator with health care decision-making authority, the consumer's surrogate as determined pursuant to Rule 1200-08-34-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(Rule 1200-08-34-.01, continued)

(25)~~(24)~~ Health Care Institution. A health care institution as defined in T.C.A. §68-11-1602.

(26)~~(25)~~ Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(27)~~(26)~~ Individual instruction. An individual's direction concerning a health care decision for the individual.

(28)~~(27)~~ Individual Support Plan (ISP). The document resulting from a process of person-centered planning. The ISP describes in detail the person, including his/her vision for his/her future, preferences, non-negotiables, and other information required to support the person in daily life. The ISP contains outcomes to be achieved with the assistance of the person's Circle of Support that relate to the person's vision for the future. The ISP is written upon a person's enrollment in Department of Mental Retardation Services and updated thereafter as changes occur in the individual's life, or at least annually.

(29)~~(28)~~ Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(30)~~(29)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(31)~~(30)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(32)~~(31)~~ Life Threatening or Serious Injury. Injury requiring the consumer to undergo significant additional diagnostic or treatment measures.

(33)~~(32)~~ Medical Record. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries and other written electronic, or graphic data prepared, kept, made or maintained in an agency that pertains to confinement or services rendered to consumers. The medical record shall meet the standards established in the contractual agreement between the state agency financially responsible for services to individuals with mental retardation or developmental disabilities.

(34)~~(33)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the consumer or other medical or surgical treatments to achieve the expressed goals of the informed consumer. In the case of the incompetent consumer, the consumer's representative expresses the goals of the consumer.

(35)~~(34)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(36)~~(35)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(37)~~(36)~~ Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(Rule 1200-08-34-.01, continued)

(38)~~(37)~~ Occupational Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(39)~~(38)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(40)~~(39)~~ Personally Informing. A communication by any effective means from the consumer directly to a health care provider.

(41)~~(40)~~ Physical Status Report (PSR). An instrument used by a registered nurse or other designated professional staff to determine level of risk and define the required health services and supports.

(42)~~(41)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(43)~~(42)~~ Physical Therapy Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(44)~~(43)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(45)~~(44)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(46)~~(45)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(47)~~(46)~~ Plan of Care. Health care plan resulting from the comprehensive nursing assessment and/or therapy plan identifying the need for nursing, physical, occupational, or speech therapy for consumers of professional support services. The plan shall meet the standards established in the contractual agreement between the state agency financially responsible for services to individuals with mental retardation or developmental disabilities.

(48)~~(47)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(Rule 1200-08-34-.01, continued)

(49)~~(48)~~ Professional Support Services. Nursing, occupational, physical or speech therapy services provided to individuals with mental retardation or developmental disabilities pursuant to a contract with the state agency financially responsible for such services.

(50)~~(49)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(51)~~(50)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the consumer's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(52)~~(51)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(53)~~(52)~~ Shall or Must. Compliance is mandatory.

(54)~~(53)~~ Site Code. An approved location from which the professional support services may be provided as deemed by the Department of Mental Retardation Services with written notice provided to the Department of Health by the professional support service agency for each site code approved for such agency.

~~(54) Speech Language Pathologist. A person currently licensed as such by the Tennessee Board of Communication Disorders and Sciences or, for purposes of these rules, a Speech Language Pathologist who is currently in their Clinical Fellowship Year.~~

(55) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(56)~~(55)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(57)~~(56)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(58)~~(57)~~ Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(59)~~(58)~~ Surrogate. An individual, other than a consumer's agent or guardian, authorized to make a health care decision for the consumer.

(60)~~(59)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the consumer.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

(Rule 1200-08-34-.05, continued)

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003.*

1200-08-34-.06 BASIC AGENCY FUNCTIONS.

(1) All personnel providing professional support services shall assure that their efforts effectively complement other services provided to the consumer, are functionally integrated into the individual daily routine and support the outcome outlined in the individual support plan. A written report of progress shall be provided to the consumer's support coordinator/case manager monthly. A written summary report for each consumer shall be sent to the attending physician at least annually.

(2) Plan of Care.

(a) The written plan of care, developed in consultation with the agency staff, shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of services, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a consumer under a plan of care which cannot be completed until after an evaluation visit, the physician shall be consulted to approve additions or modifications to the original plan. Orders for professional support services shall include the specific treatment or modalities to be used and their amount, frequency and duration. The therapist and other agency personnel shall participate in developing the plan of care.

(b) The plan(s) of care for acute or episodic illness shall be reviewed by the attending physician and agency personnel involved in the consumer's care as often as the severity of the consumer's condition requires, but at least annually. Plans of care resulting from Comprehensive Nursing Assessment will be reviewed in accordance with the physical status review schedule. Evidence of review by the physician must include the physician's signature and date of the review on the plan of care. A facsimile of the physician's signature is acceptable. Professional staff shall promptly alert the physician to any changes that suggest a need to alter the plan of care.

(3) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Orders for drugs and treatments shall be signed and dated by the physician.

(4) Skilled Nursing Services.

(a) When skilled nursing is provided, the services shall be provided by or under the supervision of a registered nurse who has no current disciplinary action against his/her license, in accordance with the plan of care. This person shall be available at all times during operating hours and participate in all activities relevant to the professional support services provided, including the development of qualifications and assignment of personnel.

(Rule 1200-08-34-.06, continued)

(b) The registered nurse's duties shall include but are not limited to the following: make the initial evaluation visit, except in those circumstances where the physician has ordered therapy services as the only skilled service; regularly evaluate the consumer's nursing needs; initiate the plan of care and necessary revisions; provide those services requiring substantial specialized nursing skill; initiate appropriate preventive and rehabilitative nursing procedures; prepare clinical and progress notes; coordinate services; inform the physician and other personnel of changes in the consumer's condition and needs; counsel the consumer and family in meeting nursing and related needs; participate in in-service programs; supervise and teach other nursing personnel. The registered nurse or appropriate agency staff shall initially and periodically evaluate drug interactions, duplicative drug therapy and non-compliance to drug therapy.

(c) The licensed practical nurse shall provide services in accordance with agency policies, which may include but are not limited to the following: prepare clinical and progress notes; assist the physician and/or registered nurse in performing specialized procedures; prepare equipment and materials for treatments; observe aseptic technique as required; and assist the consumer in learning appropriate self-care techniques.

(5) Therapy Services.

(a) All therapy services offered by the agency directly or under arrangement shall be planned, delegated, supervised or provided by a qualified therapist in accordance with the plan of care. A qualified therapist assistant may provide therapy services under the supervision of a qualified therapist in accordance with the plan of care. The therapist shall assist the physician in evaluating the level of function, helping develop the plan of care (revising as necessary), preparing clinical and progress notes, advising and consulting with the family and other agency personnel, and participating in in-service programs.

~~(b) Speech therapy services shall be provided only by a licensed speech language pathologist in good standing or speech language pathologist in the Clinical Fellowship Year under the supervision of a licensed speech language pathologist.~~

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(6) Performance Improvement.

(a) An agency shall have a committee or mechanism in place to review, at least annually, past and present professional support services including contract services, in accordance with a written plan, to determine their appropriateness and effectiveness and to ascertain that professional policies are followed in providing these services.

(b) The objectives of the review committee shall be:

1. To assist the agency in using its personnel and facilities to meet individual and community needs;

2. To identify and correct deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

(Rule 1200-08-34-.06, continued)

3. To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

4. To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of consumer care;

5. To augment in-service staff education, when applicable;

6. To provide data needed to satisfy state licensure and certification requirements;

7. To establish criteria to measure the effectiveness and efficiency of the professional support services provided to consumers; and

8. To develop a record review system for the agency to evaluate the necessity or appropriateness of the professional support services provided and their effectiveness and efficiency.

(7) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of consumer care equipment and supplies.

(c) Continuing education shall be provided for all agency consumer care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) The agency shall develop policies and procedures for testing a consumer's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a consumer's blood or other body fluid. The testing shall be performed at no charge to the consumer, and the test results shall be confidential.

(e) The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(f) Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(8) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every consumer receiving professional support services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to

(Rule 1200-08-34-.06, continued)

the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) All medical records, either in written, electronic, graphic or other acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of consumers under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the consumer, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the agency discontinues operations, records shall be maintained as mandated by this chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a consumer is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the consumer when the agency is directly involved in the transfer.

(d) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures shall govern use and removal of records and conditions for release of information. The consumer's written consent shall be required for release of information when the release is not otherwise authorized by law.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-11-304.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003.*

1200-08-34-.07 RESERVED.

1200-08-34-.08 RESERVED.

1200-08-34-.09 RESERVED.

1200-08-34-.10 INFECTIOUS AND HAZARDOUS WASTE.

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(a) Waste human blood and blood products such as serum, plasma, and other blood components;

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Carissa S. Lynch, Pharm.D.	X				
Michael R. Miller				X	
Diana L. Miller	X				
Robert Gordon				X	
John A. Marshall	X				
Jennifer Gordon-Maloney, DDS	X				
Kenneth R. Robertson, M.D.	X				
Sherry Robbins, M.D.	X				
Annette Marlar				X	
Robert C. Breeden	X				
Roger L. Mynatt	X				
Janet Williford	X				
David Rhodes	X				
Joshua A. Crisp	X				
Betty S. Hodge	X				
Bobby Wood	X				
Jim Shulman	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 01/21/2015 (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: *09/29/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/21/15 (mm/dd/yy)*

Date: 9-3-15

Signature: Kyonzté Hughes-Toombs

Name of Officer: Kyonzté Hughes-Toombs

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 9-3-15

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

9/9/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/15/15

Effective on: 12/14/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 15 PM 3:01
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	University of Tennessee Board of Trustees
CAMPUS:	Knoxville
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209; 20 U.S.C. Section 1681; 20 U.S.C. Section 1092f; Elonis v. United States, 135 S.Ct. 2011 (2015)
EFFECTIVE DATES:	December 13, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The University of Tennessee (UT) has proposed revisions to its student conduct rules that make those rules compliant with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f, and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking. From April 2011 through April 2014, the U.S. Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all UT campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will

issue final policies on sexual misconduct, domestic violence, dating violence, and stalking.

A proposed revision to the definition of the term, "weapon," Chapter 1720-02-05-.02(9) addresses concerns expressed by some members of the Tennessee General Assembly's Government Operations Committee about the potential overbreadth of the former definition.

A proposed revision to the definition of the term, "notice," Chapter 1720-02-05-.02(10) addresses concerns expressed by the Tennessee Attorney General's Office.

A proposed revision to the standards of conduct, Chapter 1720-02-05-.04(5), addresses a concern expressed by the Tennessee Attorney General's Office relating to Elonis v. United States, 135 S.Ct. 2011 (2015).

To address confusion expressed by some students, proposed revisions to the standards of conduct separate "disorderly" conduct from "lewd, indecent, or obscene conduct," but otherwise the language of the standards does not change.

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

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.

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

For Department of State Use Only

Sequence Number: 09-20-15
Rule ID(s): 6026
File Date: 9/14/15
Effective Date: 12/13/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1720-04-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-04-03-.02	Definitions
1720-04-03-.04	Fundamental Rights of the Accused
1720-04-03-.05	Standards of Conduct

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT RIGHTS AND RESPONSIBILITIES

1720-04-03-.01 INTRODUCTION.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.

(3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

1720-04-03-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee.

(2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who are eligible to enroll or have a continuing relationship with the University also are considered students for purposes of these rules.

(3) The term "student organization" means an organization composed of University students that has submitted a pending application or completed the process for registration according to University rules.

(4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.

(5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.

(8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms ~~and replica~~), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than ~~3~~four (4) inches. The term "weapon" does not include pocket knives that fold (but excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene,

preparation of food, maintenance, University-related instruction, or University employment-related duties.

(10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent. ~~by regular mail or courier service, electronic mail, or hand delivery.~~

(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship

between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;

2. consent communicated by the other person on a previous occasion;

3. consent communicated to another person;

4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);

5. the sexual arousal of the other person;

6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;

7. currently or previously cohabitating with the other person;

8. the other person's attire;

9. the other person's reputation;

10. the other person's giving or acceptance of gifts; or

11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of

such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability

to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.

(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.

(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal

benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

(25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.

(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or

sexual exploitation.

(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1720-04-03-.03 JURISDICTION.

(1) The Standards of Conduct, Chapter 1720-04-03-.05, apply to conduct that occurs on University-controlled property.

(2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:

(a) occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;

(b) involves another member of the University community; or

(c) threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

(3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the

grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.

(4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.

(5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

1720-04-03-.04 FUNDAMENTAL RIGHTS ~~OF THE ACCUSED~~.

(1) Students and student organizations charged with violating the Standards of Conduct, Chapter 1720-04-03-.05, are entitled to the following rights under the University of Tennessee, Knoxville's student judicial system:

(a) Notice of charge(s), account of the alleged misconduct, witnesses, and notice of the scheduled hearing delivered 72 hours before the hearing. The student may request additional time by showing good cause.

(b) Notice of the maximum allowable penalty (i.e., permanent dismissal).

(c) The right to a hearing closed to the public.

(d) The right to: (i) a non-adversarial hearing before the Director of Judicial Affairs or his/her designee; or (ii) an adversarial hearing before a University hearing board with jurisdiction.

(e) The right to be assisted by a Student Judicial Advisor before a University hearing board. If an adversarial criminal proceeding has been initiated against a student (e.g., a criminal charge or indictment) arising out of the same conduct at issue in the disciplinary hearing, then the student also has a right to have an attorney present during the hearing before a University hearing board. The attorney's role shall be limited to advising the student about answering questions that may be self-incriminating.

(f) Testify or remain silent in a University hearing at his/her option. However, a University hearing board is not prohibited from drawing an adverse inference against a student if the student remains silent or refuses to attend a disciplinary hearing or testify in response to evidence offered against him/her. A University hearing board shall not base its decision solely on a student's failure to attend a hearing or a student's refusal to testify or remain silent.

(g) Present the testimony of witnesses and other evidence.

(h) The presumption of innocence. The burden of proof rests with the University, such that the University must prove the student's guilt by a preponderance of the evidence.

(i) A written decision specifying the rule violated, penalty assessed, and right of appeal.

(j) Challenge the seating of any board member for good cause. The dismissal of a challenged hearing board member shall be at the discretion of the hearing board chairperson. If the chairperson is challenged, he/she may be excused at the discretion of the majority of the hearing board.

(k) Have his/her case heard only on the misconduct specified in the written notice.

(l) Challenge the admissibility of evidence.

(m) Cross-examine all available adverse witnesses.

(n) Appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12.

(2) In accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, the University will investigate and resolve reports of sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking, a copy of which is published at sexualassault.utk.edu. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. ~~In cases of involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~(a) notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~(b) a prompt, thorough, and impartial investigation of the complaint;~~

~~(c) the same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~(d) have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~(e) notice of the outcome of the University's investigation;~~

~~(f) have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~(g) notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;~~

~~(h) the same access as the accused student to any information or documents that will be used by the University during the disciplinary hearing, unless prohibited by law;~~

~~(i) challenge the seating of any disciplinary board member for good cause, which will be determined at the discretion of the chairperson of the hearing board, or, if the seating of the chairperson is challenged, then at the discretion of the majority of the hearing board;~~

~~(j) be accompanied by a person, other than a Student Judicial Advisor, of his/her choosing during the University's investigation or a disciplinary hearing, but the person shall not be permitted to speak for the victim during a disciplinary hearing;~~

~~(k) the same opportunity as the accused student to be present during the hearing, present witnesses and other evidence through a Student Judicial Advisor, challenge the admissibility of evidence through a Student Judicial Advisor, and cross-examine adverse witnesses through a Student Judicial Advisor during the disciplinary hearing;~~

~~(l) testify or remain silent in a hearing at his/her option;~~

~~(m) not to be questioned directly by the accused student during the disciplinary hearing;~~

~~(n) submit a written impact statement to the Student Disciplinary Board for consideration of the sanctioning phase of the disciplinary hearing, if the student is found guilty of the charges against him/her, or to the Office of Student Judicial Affairs for consideration during the sanctioning phase of the administrative hearing, if the accused student pleads guilty to the charges against him/her;~~

~~(o) notice of the decision of the Student Disciplinary Board or the outcome of an administrative hearing within three (3) business days of the hearing; and~~

~~(p) appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12(3).~~

(3) As an alternative to the procedures described in this Chapter, any student or student organization whose legal rights, duties or privileges are required by any statute or constitutional provision to be determined after an opportunity for a hearing shall be afforded that opportunity for hearing in accordance with the ~~Tennessee~~ Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301, *et seq.* The University's procedures for conducting contested case hearings under the ~~Tennessee~~ Uniform Administrative Procedures Act are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case hearings are contained in Chapter 1720-01-03.

1720-04-03-.05 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct:

(1) Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of the Honor Statement.

(2) Providing false information to a University official.

(3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.

(4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents.

(5) Causing physical harm to any person (including oneself); endangering the health

or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Engaging in sexual misconduct, relationship violence, or stalking.~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.

(9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.

(10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could

cause damage to, or misusing private or public property, including but not limited to University-controlled property.

(11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful, insulting, or humiliating nature. Without limiting the foregoing, such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.

(12) Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(14) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

~~(14)~~(15) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password

without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

~~(17)~~(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.

~~(18)~~(19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age.

~~(21)~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

~~(24)~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a

party or as a witness.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

~~(27)~~(28) Violating a University policy or rule as stipulated herein or as promulgated and announced by authorized personnel, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

~~(28)~~(29) Committing an act that is prohibited by local, state, or federal law.

(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

~~(29)~~(31) Engaging in retaliation.

1720-04-03-.06 HONOR STATEMENT.

(1) Honor Statement. An essential feature of the University of Tennessee, Knoxville is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity.

(2) A thorough understanding of the Honor Statement is essential to the success of the honor system. To facilitate implementation of the Honor Statement, the following avenues will be utilized:

(a) The Honor Statement, with its attendant pledge, will appear on applications for admission (undergraduate and graduate); and applicants to the University will be required to acknowledge their affirmation by signing the document in a designated location.

(b) Information regarding the Honor Statement will be included in the catalogs (undergraduate and graduate), *Hilltopics*, and in a brochure specifically addressing the Honor Statement at UT.

(c) The Honor Statement will be discussed during freshman, transfer, graduate student, and international student orientation programs.

(d) A thorough discussion of the Honor Statement in freshmen English is encouraged.

(e) Implementation methods and alternatives will be discussed during faculty orientation programs.

(f) The Honor Statement is furthered by Standard of Conduct No. 1, Chapter 1720-04-03-.05.

(3) Prohibited Conduct.

(a) The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.

(b) Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the university. Specific examples of plagiarism include, but are not limited to:

1. Using without proper documentation (quotation marks and a citation) written or spoken words, phrases, or sentences from any source;

2. Summarizing without proper documentation (usually a citation) ideas from another source (unless such information is recognized as common knowledge);

3. Borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge);

4. Collaborating on a graded assignment without the instructor's approval; and

5. Submitting work, either in whole or in part, created by a professional service and used without attribution (e.g., paper, speech, bibliography, or photograph).

(c) Specific examples of other types of academic dishonesty include, but are not limited to:

1. Providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment;

2. Providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment;

3. Falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment;

4. Serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment;

5. Altering grades, answers, or marks in an effort to change the earned grade or credit;

6. Submitting without authorization the same assignment for credit in more than one course;

7. Forging the signature of another or allowing forgery by another on any class- or University-related document such as a class roll or drop/add sheet;

8. Failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and

9. Engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(4) Responsibilities.

(a) All groups within the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community.

(b) Student Responsibilities. Each student is responsible for his/her own personal integrity in academic life. While there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to act on any violation of the Honor Statement. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing "Pledged" and signing each graded class assignment and examination.

(c) Instructor Responsibilities. Regulation of academic dishonesty is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(5) Process.

(a) When an act of alleged academic dishonesty is discovered by or brought to the attention of an instructor, the instructor shall inform the student orally or in writing about the alleged academic dishonesty, describe the evidence supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and evidence. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty.

(b) After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may take any or all of the following actions:

1. Impose an academic penalty of a failing or reduced grade in an academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; or an oral or written reprimand.

a. If the instructor decides to impose an academic penalty, then the instructor shall notify the student of the charges, evidence, findings, penalties imposed, and the procedures to appeal the findings and/or penalties. The notice should be countersigned by the department head.

b. Copies of the notice to the student shall be submitted to the Office of Student Judicial Affairs, the administrative head of the instructor's academic unit, and, where different, the head of the academic unit in which the student is enrolled.

c. After receiving notice from the instructor, the Office of Student Judicial Affairs shall provide the student with notice and information relating to an appeal of the instructor's findings of academic dishonesty and/or academic penalties.

2. Request that the Office of Student Judicial Affairs charge the student with violating Standard of Conduct No. 1, Chapter 1720-04-03-.05, and impose one or more of the disciplinary penalties described in Chapter 1720-04-03-.07. The instructor is not required to notify a student that a request has been made to the Office of Student Judicial Affairs.

(c) The Office of Student Judicial Affairs is responsible for determining whether to charge a student with violating Standard of Conduct No. 1. The decision of the Office of Student Judicial Affairs not to charge a student with violating Standard of Conduct No. 1 may not be used by the student to support an appeal of an academic penalty imposed by the instructor. The Office of Student Judicial Affairs may charge a student with violating Standard of Conduct No. 1 regardless of the response of the instructor to the alleged academic dishonesty.

(d) If a student denies a charge of academic dishonesty made by an instructor and/or the Office of Student Judicial Affairs, and/or if the student does not accept the academic penalties imposed by the instructor and/or the penalties recommended by the Office of Student Judicial Affairs, then the student may appeal to the appropriate Academic Review Board within seven (7) days of the written notice of the academic penalty or disciplinary charge, whichever occurs later. If the student does not file a timely notice of appeal, then the determination of academic dishonesty and the recommended academic penalty and/or disciplinary penalty become final.

(6) The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09, which governs academic dishonesty by students enrolled in the College of Law and controls in the event of a conflict between this Chapter and Chapter 1720-04-09.

1720-04-03-.07 PENALTIES.

(1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.

(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

(a) Warning. A warning is a notice that the student is violating or has violated the Standards of Conduct.

(b) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).

(c) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.

(f) Disciplinary Probation. Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Probation may be for a defined or indefinite period. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.

(g) Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.

(h) Indefinite Suspension. Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the Student Affairs Council to lift the suspension. The student will be expected to meet regularly with the Dean of Students, or his/her designee, throughout the period of indefinite suspension. At a minimum, the student is expected to contact and begin meeting regularly with the Dean of Students, or his/her designee, at least 15 weeks prior to the semester for which the student desires to be readmitted to the University. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.

(i) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee, Knoxville. This penalty is used when the violation of one or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct. If a disciplinary hearing board desires to impose permanent dismissal, then the board shall

communicate a recommendation of permanent dismissal to the Dean of Students. In the event a recommendation of permanent dismissal is not approved by the Dean of Students, he/she may substitute any less severe penalty; if probation is substituted, it may be for a greater period than the period specified for suspension. The Dean of Students shall notify the Director of Student Judicial Affairs when a recommendation for permanent dismissal is not approved.

(j) Revocation of Degree. Revocation of a degree means revoking a degree already awarded to a student by the University. If a disciplinary hearing board desires to revoke a degree, then the board shall communicate the recommendation to the Dean of Students, who shall either accept or reject the recommendation. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) The following penalties, by themselves, do not create a disciplinary record for a student in the Office of Student Judicial Affairs for purposes of reporting a student's conduct history: (a) warning; (b) loss of privilege; (c) education; and (d) restitution. However, those penalties may be considered as part of a student's conduct history for purposes of determining what penalty should be imposed for a future disciplinary offense.

(4) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.

(5) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:

(a) Warning. A warning is a notice that the student organization is violating or has violated the Standards of Conduct.

(b) Education. Student organizations may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.

(c) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social

activities, and using certain University-controlled property.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Social Probation. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming, All Sing, Carnicus, intramurals). Any exceptions to social probation must be approved, in advance, by the Dean of Students or his/her designee.

(f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.

(g) Revocation of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be revoked.

(6) More than one of the penalties listed above may be imposed for any single violation of the Standards of Conduct.

(7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

(8) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

1720-04-03-.08 NO CONTACT DIRECTIVES. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact

between a student and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require that the student not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student will receive written notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

1720-04-03-.09 INTERIM SUSPENSION.

(1) When the Vice Chancellor for Student Affairs or his/her designee has reasonable cause to believe that a student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Affairs or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.

(2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.

(3) Within three (3) business days of the imposition of the suspension, the student shall be offered an opportunity to appear personally before the Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.

(4) During an interim suspension, the student shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Vice Chancellor for Student Affairs or his/her designee determines in his/her sole discretion to be appropriate. A student who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on

University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Affairs or his/her designee.

(5) When a student is placed on interim suspension, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

1720-04-03-.10 INVOLUNTARY MEDICAL WITHDRAWAL OR SUSPENSION.

(1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to alcoholism, drug addiction, mental instability or other physical or psychologically incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(2) Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Affairs.

(3) Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs or the Dean of Students. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.

(4) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W' or "I," whichever is deemed appropriate by the faculty member involved.

1720-04-03-.11 THE HEARING BOARDS.

(1) Greek Judicial Board.

(a) This board has original jurisdiction in cases in which a Greek student organization has allegedly violated the InterFraternity Council (IFC),

Panhellenic, or National Pan-Hellenic Council (NPHC) Rules, Constitution, or By-Laws, or University Standards of Conduct. Hearing procedures shall afford student organizations all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. Following a hearing, the board shall determine guilt or innocence and decide upon an appropriate penalty. Appeals from these decisions are to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(b) An individual(s) member of a Greek student organization alleged to have violated a University Standard of Conduct will be referred to the Office of Student Judicial Affairs for appropriate action. The Director of Student Judicial Affairs, who will decide all jurisdictional questions, may assign jurisdiction over cases of individual discipline to the Greek Judicial Board, except for cases involving allegations of sexual harassment, sexual assault, or sexual misconduct. In such cases the Greek Judicial Board will operate under the procedures established for the Student Disciplinary Board. Appeals from these decisions are to Student Disciplinary Board and must be filed with the Office of Student Judicial Affairs in accordance with Chapter 1720-04-03-.12.

(c) Students serving as members of the Greek Judicial Board must be active members of a Greek organization and in good standing during their terms of office. Guidelines for appointing, replacing and removing board members will be suggested by the Greek Council to the Office of Student Judicial Affairs for approval. Members of the Greek Judicial Board will be required to participate in training seminars scheduled by the Office of Student Judicial Affairs.

(2) Student Disciplinary Board.

(a) Jurisdiction. The Student Disciplinary Board has the following responsibilities:

1. To hear allegations of student misconduct involving violations of the Standards of Conduct;

2. To determine the innocence or guilt of the student charged and establish an appropriate penalty in cases where the student is found guilty; and

3. To hear individual discipline cases appealed from the Greek Judicial Board and to make decisions appropriate with appellate responsibility.

(b) Membership. Members of the Student Disciplinary Board must be sophomores or above. Undergraduate and law students must have at least a 2.0 overall grade point average. Graduate students must have at least a 3.0 grade point average in all graduate work attempted. Members shall be screened and selected by a committee that consists of Office of Student Judicial Affairs staff. A member may be removed from office, for cause, by the Student Affairs Council following notice and a hearing.

(c) Hearing Procedures.

1. For each hearing, three (3) to seven (7) student board members will be selected from a pool of members. A quorum of three (3) board members must be present in order to hear a case. A majority vote of the members present is required for all decisions of the board. The chairperson votes in all cases.

2. Any board member who cannot hear the evidence fairly and objectively for any reason shall dismiss himself/herself from the case.

3. The Director of Student Judicial Affairs shall appoint a chairperson prior to the start of each hearing. The chairperson shall conduct the hearing and rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused has been advised of his/her rights and shall then read the statement of charges. A student who fails to appear before the Student Disciplinary Board in accordance with proper notification shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Office of Student Judicial Affairs good cause for granting a continuance of the hearing.

4. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty.

5. The chairperson is responsible for maintaining an orderly discussion throughout the hearing. Proceedings should be conducted with fitting dignity and should reflect the importance

and seriousness of the hearings. Any person who fails to follow the instructions of the chairperson, after a warning, shall be referred to the Director of Student Judicial Affairs for appropriate disciplinary action.

6. In the event that the accused pleads guilty, the board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.

7. If accused's attorney is present, the accused's attorney shall not question any individual, introduce evidence, raise objections, present arguments, or otherwise participate in the hearing. The failure of an accused's attorney to attend the hearing shall not be grounds for delaying the proceeding or challenging the validity of the proceeding.

8. The Student Judicial Advisor, on behalf of the University, shall present such evidence as he/she has at the hearing, including any witnesses. He/she shall not present written statements as evidence, unless circumstances make such presentation necessary and unavoidable. Under similar restrictions the accused may present written statements in his/her defense. Unsigned statements shall not be admitted as evidence. However, a statement submitted via electronic mail may be admitted if party against whom the statement is offered does not object to its admission or the chairperson determines that the statement's authenticity and validity has been verified. Hearsay evidence is, however, admissible.

9. After the presentation of evidence by the Judicial Advisor, the accused shall be allowed to present all relevant evidence. If a not guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the board has determined the issue of innocence or guilt.

10. During board deliberations all persons except the board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.

11. After a determination of guilt by the board, the Student Judicial Advisor, on behalf of the University, shall present the previous

disciplinary record of the accused, if any, and evidence of any other aggravating circumstances, to the board together with the recommendation of the Director of Student Judicial Affairs as to an appropriate penalty.

12. After presentation of evidence by the Judicial Advisor, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.

13. After the board determines the penalty, the accused shall be advised in writing of its decision.

14. The results of the board's decision shall be kept on official University judicial forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Judicial Affairs and considered a confidential disciplinary record. If necessary for adjudication of an appeal, the Director of Student Judicial Affairs may prepare a summary, certified by the chairperson of the Student Disciplinary Board, or provide that portion of the record that has been designated by the Student Tribunal or Student Affairs Council as material to the appeal.

15. A board member shall not discuss cases prior to or after the hearing. The information received by members of the board during a case is considered strictly confidential. Violations of this confidence by any board member could result in disciplinary action.

16. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-04-03-.04(2). The board may consider evidence presented by the victim as part of the University's proof.

(d) Appeals. Appeals from decisions of the Student Disciplinary Board may be made to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(3) Academic Review Boards.

(a) Jurisdiction. Academic Review Boards have original jurisdiction over cases of alleged academic dishonesty (i.e., violations of Standard of Conduct No. 1, Chapter 1720-04-03-.05) that arise out of a course or

program offered by the college or a student's appeal of an academic penalty imposed as a result of alleged academic dishonesty relating to a course or program offered by the college. Jurisdiction may include cases of academic dishonesty which involve violations of other Standards of Conduct, but such cases shall initially be referred to the Office of Student Judicial Affairs for determination of appropriate jurisdiction.

(b) Membership. The Academic Review Board of each college shall consist of an ad hoc group of three faculty members and three students selected from the college's membership by the administrative head of the college. Alternative methods of selection of the three faculty members and the three students may be adopted by an individual college with the approval of the administrative head of the college. Also, under extenuating circumstances, a college may recommend, for approval by the Student Affairs Council, a board composition which differs from that prescribed above.

(c) Hearing Procedures.

1. A quorum shall consist of four (4) members. The college shall make provision for alternates to insure the availability of a quorum.

2. In order to establish continuity among the various Academic Review Boards and to ensure the maintenance of procedural due process, a member of the Dean of Students staff shall serve as the non-voting chairperson of each Academic Review Board. His/her responsibilities shall include the scheduling of meetings, notification of parties and witnesses, and other duties as needed to ensure due process is afforded.

3. Hearing procedures shall be established by the Office of Student Judicial Affairs. Hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. All decisions shall be by a majority vote.

(d) Appeals.

1. Appeal of Decision Concerning Academic Dishonesty.

(i) Student Appeal. A student may appeal a decision of the Academic Review Board that a student is guilty of

academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) University Appeal. The University may appeal a decision of the Academic Review Board that a student is not guilty of academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12. The administrative head of the college involved makes the decision whether to appeal.

2. Appeal of Decision Concerning Academic Penalty.

(i) A student may appeal a decision of the Academic Review Board concerning an academic penalty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) If the Academic Review Board recommends that the instructor change the academic penalty proposed by the instructor, the Office of Student Judicial Affairs shall notify the instructor of the Academic Review Board's recommendation. The instructor may either accept or reject the Academic Review Board's recommendation to change an academic penalty, and the instructor or the administrative head of the college involved shall notify the Office of Student Judicial Affairs of the decision to accept or reject the Academic Review Board's recommendation within seven (7) days of the Academic Review Board's recommendation. If the instructor rejects the Academic Review Board's recommendation, then the Office of Student Judicial Affairs shall notify the student of the student's right to appeal the instructor's academic penalty in accordance with Chapter 1720-04-03-.12, in which case the student shall submit the request for appeal within seven (7) calendar days of the notice of the instructor's decision to reject the Academic Review Board's recommendation.

(iii) In the event the instructor rejects the recommendation of the Student Affairs Council following an appeal by the student of an academic penalty, then the student may appeal to the Chancellor, who, in consultation with the Provost, shall be the final decision maker concerning changes to student's grades on the student's official University academic record. The student must file a

request for appeal within seven (7) calendar days of the notice to the student concerning the instructor's rejection of the recommendation of the Student Affairs Council.

(4) Student Tribunal.

(a) Original Jurisdiction. The Student Tribunal has original jurisdiction in cases of conflicts between (non-Greek) student organizations or conflicts between individuals and student organizations, cases which involve interpretation of the Student Government Constitution, cases of challenge to results of Student Government elections, and discipline cases involving charges of dishonesty in these elections.

(b) Appellate Jurisdiction. The Student Tribunal has appellate jurisdiction to review decisions of the Student Disciplinary Board and the Greek Judicial Board. Any other jurisdiction may be assigned by the Director of Student Judicial Affairs. The forms to be used on appeal and other procedural requirements shall be established by the Office of Student Judicial Affairs.

(c) Membership. The Student Tribunal consists of three (3) to seven (7) members, selected by the Director of Student Judicial Affairs or designee from the Student Disciplinary Board.

(d) Hearing Procedures. A quorum of three (3) members is required for a hearing before the Student Tribunal, and a majority vote of the members present is required for all decisions. Other hearing procedures shall be established by the Office of Student Judicial Affairs. In cases of original jurisdiction, the hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be consistent with the procedures used by the Student Disciplinary Board.

(e) Appeals. Appeals from decisions of the Student Tribunal may be made to the Student Affairs Council in accordance with Chapter 1720-04-03-.13.

(5) Student Affairs Council.

(a) Jurisdiction. The Student Affairs Council is the hearing board for appeals from decisions of the Student Tribunal, Academic Review Boards, and for appeals filed by the Dean of Students or his/her designee. It is the final decision making board in the judicial system. The Council also hears petitions to lift the disciplinary penalty of indefinite suspension. The Council may periodically review the status of student conduct and the judicial system and make appropriate recommendations.

(b) Membership. The Student Affairs Council is composed of the following members:

1. The Vice Chancellor for Student Affairs, who serves as the chairperson;

2. All the Deans of the University of Tennessee, Knoxville;

3. Three (3) faculty members, associate professor or above, appointed by the Faculty Senate (the initial appointments shall be staggered in terms so that one new faculty member is appointed each year after the initial appointment); and

4. Eight (8) student members (one of whom shall be a graduate student), appointed by the Student Government Association, for a period of one year.

(c) Except for appeals from the Student Tribunal, a majority of the Student Affairs Council shall constitute a quorum for the conducting of all business, and a majority vote of the members present is required for all decisions.

(d) Appeals from the Student Tribunal. A subgroup of eleven (11) members of the Student Affairs Council, four (4) of whom shall be students, shall hear appeals from the Student Tribunal or an Academic Review Board. The Vice Chancellor for Student Affairs or his/her designee shall serve as the chairperson of the subgroup and shall select the ten (10) other members of the subgroup from the general membership of the Student Affairs Council.

The Student Affairs Council will hear appeals on the record, unless it elects by a majority vote of members present to hear the case de novo.

1720-04-03-.12 APPEAL AND SCOPE OF REVIEW.

(1) Appeal. The disciplinary action of any board may be appealed to the next higher board.

(a) In all cases the request for appeal must be submitted in writing to the Office of Student Judicial Affairs within seven (7) calendar days of written notice of the board decision. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.

(b) If written briefs are submitted or if required by the appellate board's bylaws, they must be submitted within fourteen (14) calendar days of submission of the request for appeal. Under normal circumstances appeals will be heard within seven (7) days after written briefs have been submitted.

(c) All appeals (except those to the Student Affairs Council, which may elect to hear the case de novo) must be taken upon the record made before the original board.

(d) Pending the outcome of an appeal, the penalty specified in the original decision shall not be imposed.

(2) Scope of Review. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:

(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).

(b) New Evidence. In cases appealed on grounds of new evidence, the moving party must show that such evidence is material to the decision of the board on the issue of innocence or guilt, and that said evidence could not have been discovered by due diligence prior to the original hearing.

(c) Due Process. In cases appealed on the grounds of denial of due process, the moving party must show that the adjudicatory process of the initial hearing was not conducted in conformity with properly prescribed procedures. The moving party must also show that the alleged discrepancy was materially adverse to the moving party's interest. Nothing contained in the foregoing shall be construed as limiting the right of the Dean of Students to request the Student Affairs Council to review the decision of any judicial board.

(3) In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of a University disciplinary board to the next higher board. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:

(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).

(b) New Evidence. An alleged victim may appeal a decision by showing that there is new evidence material to the decision of the board on the issue of innocence or guilt, and that the evidence could not have been discovered by the exercise of due diligence prior to the original disciplinary hearing.

(4) The decision of any board or administrative officer of the University of Tennessee, Knoxville is subject to review by the Chancellor and the President pursuant to the University of Tennessee Bylaws, Article V, Section 7.

1720-04-03-.13 INSPECTION AND SEARCH POLICY.

(1) Entry by University authorities into occupied rooms in residence halls will be divided into three categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes a danger to person, property, or the building itself.

(a) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.

(b) Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from the Dean of Students, the Vice Chancellor for Student Affairs, or a designee of Dean of Students or Vice Chancellor for Student Affairs, unless in compliance with federal or state law.

(c) Procedure for Search in Residence Hall Rooms: A request for permission to search may be made by the Hall Director, Assistant Hall Director, or their superiors when reasonable cause exists to suspect that a violation is occurring or has occurred. If permission to search is verbally authorized,

it must be verified in writing to the occupant(s) of the facility searched by the hall staff members requesting the search. A copy of the authorization form is presented to the occupant(s) or left in the room if the occupant(s) is absent. The authorization form shall contain the following:

1. Description of the place to be searched;

2. Name of the person authorizing the search;

3. Description of the item(s) sought; and

4. Name of the person requesting the search authorization.

(d) Procedure for Search in Fraternity Houses: For purposes of search, the fraternity house will be divided into open and closed areas. The closed areas will be the dorm section and chapter room. University authorities may enter the open areas for purpose of inspection or search without permission, but there will be no search of personal belongings or closed areas of the house. University authorities will not enter the closed areas without the written permission of the Dean of Students, the Vice Chancellor for Student Affairs, or their designees, or in compliance with federal or state laws.

(e) Resident Complaint: Should a resident believe that a University staff member has misused or abused his/her authority to inspect his/her room, the resident should file a complaint. He/she may prepare a written statement for review by the Office of Student Judicial Affairs. Or, if he/she prefers, the resident may state his/her complaint to an Area Coordinator or to a staff member of the Office of Student Judicial Affairs. The complaint will then be investigated, appropriate action will be taken, and the student will be informed in writing of the results of the investigation.

1720-04-03-.14 ADMINISTRATIVE PROCEDURES.

(1) Residence Hall Regulations. Initially, violations of residence hall regulations will be handled by the Hall Director of the appropriate residence hall. Based upon the nature of the alleged violations and the past conduct of the accused, the Hall Director shall determine if the Hall Director Option is appropriate or refer the case to the Office of Student Judicial Affairs. If the Hall Director Option is deemed appropriate, it will be administered as follows:

(a) The accused student will be notified;

1. That he/she is suspected of an alleged violation;

2. Of circumstances of the violation;

3. Of his/her rights under the judicial system;

4. Of his/her rights to have his/her case heard by a student disciplinary board;

5. That the Hall Director Option does not include imposition of a penalty; and

6. That acceptance of the Hall Director Option constitutes an admission of guilt which may be introduced at any subsequent disciplinary hearing.

(b) If the student accepts the Hall Director Option he/she shall reply, in writing.

1. Acknowledging his/her participation in the alleged violation;

2. Waiving his/her right to a hearing before the Student Disciplinary Board; and

3. Waiving a right to appeal the administrative decision.

(c) If the student rejects the Hall Director Option, his/her case will be forwarded to the Office of Student Judicial Affairs for action in accordance with violations of Standards of Conduct.

(2) Standards of Conduct. When allegations of individual misconduct are referred to the Office of Student Judicial Affairs, the case will be adjudicated in accordance with procedures governing alleged violations of Standards of Conduct.

1720-04-03-.15 EMERGENCY POWERS. When, in the judgment of the Student Affairs Council of the University of Tennessee, conditions are such that it is impractical for the Student Disciplinary Boards to function, the Vice Chancellor for Student Affairs may suspend these procedural regulations and appoint an ad hoc committee to hear disciplinary matters. Any such ad hoc committee shall follow procedures that will insure the protection of the rights of the students involved, as stated herein. Any decisions by the ad hoc committee may be appealed to the Student Affairs Council.

1720-04-03-.16 TERMINATION OF STUDENT EMPLOYEES.

(1) General:

(a) The provisions of this policy statement apply to all student employees except those on college work-study (sec policy statement on termination of financial assistance.)

(b) The purpose of this statement is to provide procedures for the termination of student employees.

(2) Definitions:

(a) Student Employee. An employee who is classified as a "student employee" by the payroll section of the Office of the Treasurer, University of Tennessee.

(b) Contract Employee. A student employee who has a written contract with the University providing employment for a specified period of time.

(c) Non-Contract Employees. All students not employed for a specified period of time, their employment being terminable at the will of either party irrespective of the quality of the performance of the other party.

(d) Gross Misconduct. Theft or dishonesty, gross insubordination, destruction of University property, falsification of records, acts of moral turpitude, reporting to duty under the influence of intoxicants, using or selling illicit drugs on University premises, disorderly conduct, provoking a fight, and such other similar acts involving intolerable behavior by the employee.

(e) Grounds for Termination of Contract Employees. Contract employees may be terminated during the term of their employment for gross misconduct or inadequate job performance.

(3) Notice:

(a) Non-Contract Employees. Whenever, in the opinion of the supervisor, a non-contract employee should be terminated, he/she shall be notified in writing setting forth the date of termination. If the reason for termination involves gross misconduct, the supervisor will, prior to termination, consult with the Vice Chancellor having administrative responsibility for the employee.

(b) Contract Employees. Whenever a supervisor is of the opinion that a contract employee should be terminated, he/she shall notify the

appropriate Vice Chancellor. The Vice Chancellor shall notify the employee in writing of the reasons for his/her immediate termination or suspension, as appropriate, and of his/her right to request a hearing in accordance with the Administrative Procedures Act (T.C.A. § 4-507, *et seq.*) or as hereinafter provided.

(4) Request for a Hearing:

(a) Contract Employee. The request of the employee together with his/her election of an Administrative Procedures Act hearing or one under this policy statement shall be forwarded in writing within five working days to the Vice Chancellor having administrative responsibility for the employee.

1. If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Chancellor shall forward the file to the Chancellor for the appointment of a hearing officer.

2. If the employee elects a hearing under this policy statement, the Vice Chancellor shall immediately thereafter establish a three member hearing committee.

(b) Non-Contract Employees. Non-contract employees may appeal their termination through the appropriate Dean/Director and Vice Chancellor to the Chancellor. No right to a hearing accompanies this right of appeal.

(5) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:

(a) Conduct a hearing within ten working days of the employee's request for said hearing;

(b) Make findings of fact and recommendations to the appropriate Vice Chancellor;

(c) Notify the employee within five working days after the hearing of the committee's findings and recommendations;

(d) Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Chancellor.

(6) Hearing Procedures: Employees who are entitled to a hearing as provided above are entitled to the following procedural rights:

(a) A written account of the alleged misconduct or grounds for inadequate work performance;

(b) Reasonable notice of the time and place of the requested hearing;

(c) The assistance of a representative of his/her choice; if the employee requesting a hearing desires to be represented by an attorney, the appropriate Vice Chancellor must be notified by the employee at least three days prior to the scheduled hearing;

(d) To present all pertinent evidence including witnesses;

(e) To confront and cross-examine all adverse witnesses.

(7) Decision and Appeal:

(a) Hearing Committee. The appropriate Vice Chancellor shall within five working days after receipt of findings and recommendations of the hearing committee notify the employee in writing of his/her decision and of the employee's right to appeal as provided by Article 5, Section 7 of the University By-Laws. An employee's appeal must be submitted in writing to the Chancellor within ten business days after receipt of the decision.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

1720-04-03-.17 TERMINATION OF FINANCIAL ASSISTANCE.

(1) General:

(a) Coverage: The provisions of this policy apply to student financial assistance except graduate assistantships and fellowships.

(b) Purpose: The purpose this policy is to provide procedures for the termination of financial assistance.

(2) Definitions:

(a) Athletic Grant-in-aid: A contract for financial assistance which has been approved by the Advisory Committee on Student Financial Aid and awarded in accordance with the provisions of the Constitution and By-Laws of the Southeastern Conference and the National Collegiate Athletic

Association.

(b) Financial Aid: Assistance awarded to a student in one of the following categories: college work-study, scholarships (including graduate), loans, and grants.

(3) Notice:

(a) Athletic Grant-in-Aid.

1. Whenever the Athletic Department proposes that the financial assistance be terminated within the contract period, the student shall be notified in writing by the Director of Financial Aid of the proposed termination. The notice shall contain the reasons for termination, the student's right to a hearing in accordance with the contested case provision of the Administrative Procedures Act or in accordance with the provisions hereinafter provided.

2. Whenever athletic financial aid is not to be renewed at the end of the contract period, the student shall be notified of his/her right to a hearing, in accordance with the requirements of the Constitution of the National Collegiate Athletic Association, before the Financial Aid Hearing Committee.

(b) Financial Aid. Whenever financial aid is to be modified or terminated, the student shall be notified of the reasons for the proposed modification or termination and of the right to appeal by contacting the Director of Financial Aid. If the Director of Financial Aid is unable to amiably resolve the student's appeal, it shall proceed as follows:

1. If the appeal concerns interpretation of policy, the student shall be afforded the right of further appeal through the Dean of Admissions and Records and the Vice Chancellor for Academic Affairs to the Chancellor.

2. If the appeal concerns a disputed question of fact, the student shall be advised of the right to a hearing before the Financial Aid Hearing Committee or in accordance with the Administrative Procedures Act.

(4) Request for a Hearing: The request for a hearing together with his/her election of an Administrative Procedures hearing or one under this policy shall be made in writing to the Director of Financial Aid within five (5) calendar days of receipt of the notice of proposed termination.

(a) If the student elects a hearing under the provision of the Administrative Procedures Act, the Director of Financial Aid shall forward the file to the Provost for the appointment of a hearing officer.

(b) If the student elects a hearing under this policy statement, the Director of Financial Aid shall immediately forward the request for a hearing together with a copy of the complete file to the Chairperson of the Advisory Committee on Student Financial Aid.

(5) Hearing Committee. At the beginning of each semester, the Chairperson of the advisory committee on Student Financial Aid shall appoint a hearing subcommittee of not less than three (3) persons who shall be charged with the responsibility of hearing all appeals during that semester.

(6) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:

(a) Conduct a hearing within ten working days of the student's request for said hearing. When the University is not in session, the hearing shall be held as soon as reasonably possible.

(b) Make findings of fact and a determination as to the termination of financial aid.

(c) Notify the student as soon as possible of the committee's decision.

(d) Notify the student of his/her right to appeal, as indicated below.

(7) Hearing Procedures: Students who are entitled to a hearing as above provided are entitled to the following procedural rights:

(a) A written notice of the alleged grounds for termination of financial assistance.

(b) To reasonable notice of the time and place of the requested hearing.

(c) The assistance of a representative of his/her choice. If the student requesting a hearing desires to be represented by an attorney, the University must be notified by the student at least three days prior to the scheduled hearing.

(d) To confront and cross-examine all adverse witnesses.

(8) Appeal:

(a) Hearing Committee Decision. The student may appeal the decision of the hearing committee in accordance with Article V, Section 7 of the University By-Laws. An appeal must be submitted in writing to the Chancellor within five (5) business days.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg				x	
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/25/2015, 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: 08/14/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

University of Tennessee (Knoxville) Cahapter 1720-04-03

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

8/28/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/14/15

Effective on: 12/13/15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 14 PM 1:36
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	University of Tennessee Board of Trustees
CAMPUS:	Chattanooga
SUBJECT:	Student Conduct
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209; 20 U.S.C. Section 1681; 20 U.S.C. Section 1092f; Elonis v. United States, 135 S.Ct. 2011 (2015)
EFFECTIVE DATES:	December 13, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The University of Tennessee (UT) has proposed revisions to its student conduct rules that make those rules compliant with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f, and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking. From April 2011 through April 2014, the U.S. Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all UT campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will

issue final policies on sexual misconduct, domestic violence, dating violence, and stalking.

A proposed revision to the definition of the term, "weapon," Chapter 1720-02-05-.02(9) addresses concerns expressed by some members of the Tennessee General Assembly's Government Operations Committee about the potential overbreadth of the former definition.

A proposed revision to the definition of the term, "notice," Chapter 1720-02-05-.02(10) addresses concerns expressed by the Tennessee Attorney General's Office.

A proposed revision to the standards of conduct, Chapter 1720-02-05-.04(5), addresses a concern expressed by the Tennessee Attorney General's Office relating to Elonis v. United States, 135 S.Ct. 2011 (2015).

To address confusion expressed by some students, proposed revisions to the standards of conduct separate "disorderly" conduct from "lewd, indecent, or obscene conduct," but otherwise the language of the standards does not change.

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

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.

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

For Department of State Use Only

Sequence Number: 09-21-15
Rule ID(s): 6027
File Date: 9/14/15
Effective Date: 12/13/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

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

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

Chapter Number	**Chapter Title**
1720-02-05	Student Code
Rule Number	**Rule Title**
1720-02-05-.02	Definitions
1720-02-05-.04	Standards of Conduct
1720-02-05-.05	Investigations of Student Conduct
1720-02-05-.06	Due Process and Student Rights
1720-02-05-.07	Student Conduct Hearing Procedures

RULES
OF
THE UNIVERSITY OF TENNESSEE
(CHATTANOOGA)

CHAPTER 1720-02-05
STUDENT CODE

1720-02-05-.01 INTRODUCTION.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, protecting the rights and privileges of all members of the University community, providing a basis for orderly conduct of the affairs of the University, promoting a positive relationship between the University and its surrounding community, preserving institutional integrity and property, encouraging students to engage in conduct that brings credit to themselves and the University, and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.

(3) Disputes between organizations (except in fraternity/sorority cases which may be within the jurisdiction of the appropriate Greek governing council and/or the Dean of Students office) shall be subject to the jurisdiction of the Vice Chancellor for Student Development or his or her designee.

(4) The Vice Chancellor for Student Development or his or her designee shall have jurisdiction over disputes between individual students and organizations when such arbitration is requested by either of the parties involved.

1720-02-05-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee at Chattanooga.

(2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee at Chattanooga, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but

who are eligible to enroll or have a continuing relationship with the University also are considered students for purposes of these rules.

(3) The term "student organization" means an organization composed of University students that has submitted a pending application or completed the process for registration according to University rules.

(4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.

(5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(6) The term "University official" means an employee of the University, including faculty members and staff, or a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.

(8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms~~and replica~~), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than ~~3~~ four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene,

preparation of food, maintenance, University-related instruction, or University employment-related duties.

(10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent.

(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or

words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;

2. consent communicated by the other person on a previous occasion;

3. consent communicated to another person;

4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);

5. the sexual arousal of the other person;

6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;

7. currently or previously cohabitating with the other person;

8. the other person's attire;

9. the other person's reputation;

10. the other person's giving or acceptance of gifts; or

11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is

incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.

(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.

(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

(25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.

(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.

(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1720-02-05-.03 JURISDICTION.

(1) The Standards of Conduct, Chapter 1720-02-05-.04, apply to conduct that occurs on University-controlled property.

(2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:

(a) occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;

(b) involves another member of the University community; or

(c) threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

The above-listed examples of off-campus conduct that is subject to discipline are separate and independent grounds for discipline, and one ground for discipline shall not be interpreted in any manner to modify, explain, or limit any other ground for discipline.

(3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Development, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated. The University may refer matters to federal, state, or local authorities for prosecution when appropriate.

(4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.

(5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

1720-02-05-.04 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct:

(1) Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of The Honor Code.

(2) Providing false information to a University official.

(3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.

(4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents.

(5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Engaging in sexual misconduct, relationship violence, or stalking. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or~~

~~acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.

(9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.

(10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.

(11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful, insulting, or humiliating nature. Without limiting the foregoing, such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.

(12) Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(14) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

~~(14)~~(15) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

~~(17)~~(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.

~~(18)~~(19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age.

~~(21)~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

~~(24)~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

~~(27)~~(28) Violating a University policy or rule as stipulated herein or as promulgated and announced by authorized personnel, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

~~(28)~~(29) Committing an act that is prohibited by local, state, or federal law.

(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

~~(29)~~(31) Engaging in retaliation.

1720-02-05-.05 INVESTIGATIONS OF STUDENT CONDUCT.

(1) All University investigations shall be conducted in an ethical manner, keeping in mind the rights of students. The following regulations shall be strictly observed.

(2) In accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, the University will investigate and resolve reports of

sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.

(3) Inspection and Search Policy. Entry by University officials into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University officials in order to ascertain the health and safety conditions in the room, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city, state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.

(a) Inspection: Scheduled inspections by University officials, with the exception of daily janitorial and maintenance operations, shall be preceded, if possible, by twenty-four hours notice to the residents. During the inspection, there will be no search of drawers or closets or personal belongings.

(b) Search: University officials will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his or her designee. University officials shall have, if possible, the Resident Director or his or her designee accompany them on the search.

1720-02-05-.06 DUE PROCESS AND STUDENT RIGHTS.

(1) Due process shall guarantee to the accused student the following:

(a) The right to be informed of charges in writing prior to the hearing.

(b) The right of reasonable time in which to prepare a defense.

(c) The right to a fair and just hearing.

(d) The right to challenge all charges and testimony used against the accused student and to question witnesses.

(e) The right to be informed in writing of:

1. The final decision of his or her case.

2. The proper procedure for appeal.

(f) The right to be accompanied by an advisor he or she chooses, at his or her

own expense.

1. The accused student is responsible for presenting his or her own information, and therefore, advisors are not to speak or participate directly in a University hearing.

2. Students should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the University hearing.

3. Delays will not normally be allowed due to the scheduling conflicts of an advisor.

(2) Any student or student organization shall be formally charged in writing with the alleged offense. The date, time, and place of occurrence of the offense shall be stated on the statement of charges.

(3) The Dean of Students office must keep accurate records of each hearing and the disposition of each case.

(4) In accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, in a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student and the alleged victim shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. ~~In cases of involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~(a) notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~(b) a prompt, thorough, and impartial investigation of the complaint;~~

~~(c) the same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~(d) have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~(e) notice of the outcome of the University's investigation;~~

~~(f) have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~(g) notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;~~

~~(h) the same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;~~

~~(i) challenge the seating of any Student Conduct Board member for good cause, which will be determined at the discretion of the University Hearing Officer;~~

~~(j) be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;~~

~~(k) the same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;~~

~~(l) testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Student Conduct Board or University Hearing Officer finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~

~~(m) not to be questioned personally by the accused student during the disciplinary hearing;~~

~~(n) submit a written impact statement to the Student Conduct Board or University Hearing Officer for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~

~~(o) notice of the decision of the Student Conduct Board or University Hearing Officer within three (3) business days of the disciplinary hearing; and~~

~~(p) appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.~~

1720-02-05-.07 STUDENT CONDUCT HEARING PROCEDURES.

(1) Complaints

(a) Any member of the University community may present a complaint to the Dean of Students office against a student for violations of the Student Code. Any complaint should be submitted as soon as possible after the event takes place. Any charge(s) shall be prepared in writing by the Dean of Students office.

(b) All charges shall be presented to the accused student in written form.

(2) Hearing Options

(a) An accused student desiring to contest the charge(s) against him or her must do so by requesting a hearing within five (5) days of his or her receipt of written notice of the charge(s).

(b) The accused student(s) may, at his or her option, request a hearing before a panel of individuals (Student Conduct Board) or by a University Hearing Officer selected by the Vice Chancellor for Student Development (or his or her designee). A hearing before a Student Conduct Board will be chaired by a University Hearing Officer similarly selected. Board members and hearing officers shall be impartial and anyone lacking such impartiality shall recuse him/herself or may be removed by the Vice Chancellor for Student Development upon request of any party to a University hearing.

(c) A requested hearing shall be scheduled promptly after receipt of the request.

(d) In the absence of a voluntary written waiver of the accused student's right to a hearing under the provisions of the ~~Tennessee~~ Uniform Administrative Procedures Act (UAPA) (T.C.A. § 4-5-108 et seq.), a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05, ~~APA hearing procedures~~ and these procedures in this Section .07 shall not apply.

(3) Hearing Procedures - The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:

(a) All University hearings shall be closed to the public.

(b) The accused student (and certain "victims" where permitted by law) and his or her advisor, if any, shall be allowed to attend the entire portion of the University Hearing at which information is received (excluding deliberations).

(c) Each party will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action

at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may he limited.

(d) All procedural questions are determined by the University Hearing Officer.

(e) The Student Conduct Board or University Hearing Officer sitting alone will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.

(f) The standard for a finding of responsible is a preponderance of the evidence.

(g) Following the conclusion of the University hearing, the Student Conduct Board or University Hearing Officer sitting alone will consider the evidence and present written findings.

(h) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.

(4) In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-2-5-.06(4).

1720-02-05-.08 PENALTIES.

(1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record, the student's or student organization's responsiveness to the conduct process, student academic classification, and other aggravating or mitigating factors.

(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

(a) Warning. A notice that the student is violating or has violated the Standards of Conduct.

(b) Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).

(c) Educational Sanction. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Development or his/her designee.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.

(f) Disciplinary Probation. This penalty permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.

(g) Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Other conditions of suspension are specific to each individual case and may include a requirement of community service or other requirement or restriction.

(h) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student on the Chattanooga campus. This penalty is used when the violation of one or more of the institution's Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the institution's Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.

(i) Revocation of Admission or Degree. Revocation of admission or degree means revoking a student's admission to the University or revoking a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process or until the student satisfies the terms and conditions of any penalties imposed.

(4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:

(a) Warning. A notice that the student organization is violating or has violated the Standards of Conduct.

(b) Educational Sanction. Student organizations may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.

(c) Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.

(f) Revocation of University Recognition. In cases of serious misconduct, a student organization's University registration may be revoked.

(5) More than one of the penalties listed above may be imposed for any single violation of the Standards of Conduct. Penalties may be applied retroactively to the date of the offense.

(6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

1720-02-05-.09 NO CONTACT DIRECTIVE. In cases involving allegations of assault, injury, sexual abuse, harassment, or where there is reason to believe continued contact between a student and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Development, or his/her designee, may require that the student not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student will receive written or electronic notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request a no contact directive. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

1720-02-05-.10 INTERIM SUSPENSION.

(1) When the Vice Chancellor for Student Development or his/her designee has reasonable cause to believe that a student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Development or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.

(2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.

(3) Within three (3) business days of the imposition of the suspension, the student shall be offered an opportunity to appear personally before the Vice Chancellor for Student Development or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.

(4) During an interim suspension, the student shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Vice Chancellor for Student Development or his/her designee determines in his/her sole discretion to be appropriate. A student who receives an interim suspension and violates the terms of the interim suspension shall be subject to

further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Development or his/her designee.

1720-02-05-.11 APPEALS.

(1) Decisions of the Student Conduct Board or University Hearing Officer sitting alone may be appealed to the Vice Chancellor for Student Development by delivering a signed statement containing:

(a) A statement that he/she appeals the decision;

(b) A brief statement of the grounds for the appeal. The basis for filing an appeal is limited to the following grounds:

1. the student's or student organization's rights were violated in the hearing process;

2. new relevant material evidence or information has been provided that could not have been discovered at the time of the hearing;

3. the information presented did not support the decision by a preponderance of the evidence (more likely than not) standard; or

4. the sanction(s) imposed were not appropriate for the violation.

(2) The Vice Chancellor for Student Development may:

(a) Uphold the decision;

(b) Amend the decision;

(c) Return the case for reconsideration; or

(d) Overturn the decision.

(3) Either Party may appeal to the Chancellor of the University. In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.

1720-02-05-.12 WITHDRAWAL OR TEMPORARY SUSPENSION DUE TO PHYSICAL OR PSYCHOLOGICAL ILLNESS.

(1) When a student is unable to pursue his or her academic work effectively, or when his or her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, the use of alcohol, drugs, or other psychologically incapacitating illnesses or conditions, he or she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(a) Withdrawal. A student may be withdrawn from the University only after an evaluation of his or her mental, physical condition, or behavior by a panel of at least three persons appointed by the Vice Chancellor for Student Development. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. He or she shall enjoy the rights of normal due process procedures. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Development who will notify the student in writing of his or her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Development.

(b) Grades. When a student is suspended or withdrawn from the University for reasons described in this section, he or she will be assigned a grade of "W".

(c) Committee Composition and Hearing. The panel referred to herein will include at least one member of the faculty at large and representative of the Counseling Center or a psychologist. The Dean of Students or his or her designee would normally have responsibility for preparing the charges and presenting the case. The student in question would have the right to normal due process provisions.

(2) Temporary Suspension. Whenever a student, because of his or her mental or physical condition, is unable to pursue his or her academic work effectively, or is disruptive to educational processes or constitutes a danger to persons or property, he or she may be suspended from the University for a reasonable period of time by the Vice Chancellor for Student Development. The University will then schedule a hearing within 5 class days of the beginning of the suspension. If the University does not withdraw the student after the hearing, he or she may return to the University at the end of the suspension period.

1720-02-05-.13 PARKING APPEALS. Appeals of student parking tickets are reviewed by the Student Parking Appeals Board. Decisions concerning the appeals are based on a majority vote of the Board.

1720-02-05-.14 COMPOSITION OF STUDENT PARKING APPEALS BOARD.

(1) The Student Parking Appeals Board shall be composed of six student members plus a Chair and six alternates. Two students will be appointed by the Student

Senate from the general student body. Two students will be appointed by the faculty, one appointed by the President of SGA, and one appointed by the Office of Student Development. Each appointing body shall also appoint the alternates. An alternate will serve when a regular member cannot be present or when a member is excused for reasons such as personal friendship with the principals.

(2) All members must have a 2.00 cumulative grade point average and be enrolled as full time students and not be on any form of probation.

(3) The Chair will be elected by the Board and votes in case of tie.

(4) A temporary chair will be elected by the members of the board in the event:

(a) The Chair is a party to the case;

(b) The Chair is absent; or

(c) The Chair removes himself/herself from the case.

(5) Once appointed, students remain on the Student Parking Appeals Board until they terminate at the University, cease to be eligible to serve, or resign voluntarily.

1720-02-05-.15 EMERGENCY SITUATIONS. When in the opinion of the Chancellor, conditions are such that there exists a clear and immediate danger to the physical safety or well-being of the members of the University community or safety of University property, he or she may direct that the accused student or organization be suspended pending initiation (and completion) of normal disciplinary proceedings provided those procedures are offered as soon as can reasonably be accomplished. The Chancellor may delegate this authority to the Vice Chancellor for Student Development.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/25/2015, 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: 08/14/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

8/27/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/14/15

Effective on: 12/13/15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 14 PM 1:36
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	University of Tennessee Board of Trustees
CAMPUS:	University of Tennessee Health Science Center
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209; 20 U.S.C. Section 1681; 20 U.S.C. Section 1092f; Elonis v. United States, 135 S.Ct. 2011 (2015)
EFFECTIVE DATES:	December 13, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The University of Tennessee (UT) has proposed revisions to its student conduct rules that make those rules compliant with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f, and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking. From April 2011 through April 2014, the U.S. Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all UT campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will

issue final policies on sexual misconduct, domestic violence, dating violence, and stalking.

A proposed revision to the definition of the term, "weapon," Chapter 1720-02-05-.02(9) addresses concerns expressed by some members of the Tennessee General Assembly's Government Operations Committee about the potential overbreadth of the former definition.

A proposed revision to the definition of the term, "notice," Chapter 1720-02-05-.02(10) addresses concerns expressed by the Tennessee Attorney General's Office.

A proposed revision to the standards of conduct, Chapter 1720-02-05-.04(5), addresses a concern expressed by the Tennessee Attorney General's Office relating to Elonis v. United States, 135 S.Ct. 2011 (2015).

To address confusion expressed by some students, proposed revisions to the standards of conduct separate "disorderly" conduct from "lewd, indecent, or obscene conduct," but otherwise the language of the standards does not change.

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

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.

15

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

For Department of State Use Only

Sequence Number: 09-22-15
Rule ID(s): 6028
File Date: 9/14/15
Effective Date: 12/13/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1720-03-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-03-03-.02	Definitions
1720-03-03-.04	Standards of Conduct
1720-03-03-.08	Hearing Procedures

RULES
OF
THE UNIVERSITY OF TENNESSEE
(HEALTH SCIENCE CENTER)

CHAPTER 1720-03-03
STUDENT RIGHTS AND RESPONSIBILITIES

1720-03-03-.01 INTRODUCTION.

(1) Students at the University of Tennessee Health Science Center are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, protecting the rights and privileges of all members of the University community, providing a basis for orderly conduct of the affairs of the University, promoting a positive relationship between the University and its surrounding community, preserving institutional integrity and property, encouraging students to engage in conduct that brings credit to themselves and the University, and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.

(3) Students are responsible for being fully acquainted and for complying with the University catalog, student handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

1720-03-03-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee Health Science Center.

(2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.

(3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.

(4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.

(5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.

(8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms~~and replica~~), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than ~~three~~ four (~~3~~4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.

(10) The term "notice" means notice given in writing and transmitted by United

States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent.~~delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.~~

(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even

if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;

2. consent communicated by the other person on a previous occasion;

3. consent communicated to another person;

4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);

5. the sexual arousal of the other person;

6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;

7. currently or previously cohabitating with the other person;

8. the other person's attire;

9. the other person's reputation;

10. the other person's giving or acceptance of gifts; or

11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be

difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.

(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.

(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.

(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.

(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and

objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

(25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.

(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.

(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1720-03-03-.03 JURISDICTION.

(1) The Standards of Conduct, Chapter 1720-03-03-.04, apply to conduct that occurs on University-controlled property.

(2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University,

including, but not limited to, conduct which:

(a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;

(b) Involves another member of the University community; or

(c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

(3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Chief Student Affairs Officer, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.

(4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.

(5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

1720-03-03-.04 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct:

(1) Cheating, plagiarism, or any other act of academic dishonesty, including but not limited to an act in violation of the Honor Code.

(2) Providing false information to a University official.

(3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.

(4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.

(5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement ~~(including electronically)~~ that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Engaging in sexual misconduct, relationship violence, or stalking. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any

means is also prohibited.

(9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.

(10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.

(11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(12) Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(14) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

~~(14)~~(15) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

~~(17)~~(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.

~~(18)~~(19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

~~(21)~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

~~(24)~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a

party or as a witness.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

~~(27)~~(28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

~~(28)~~(29) Committing an act that is prohibited by local, state, or federal law.

(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

~~(29)~~(31) Engaging in retaliation.

1720-03-03-.05 PENALTIES.

(1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Efforts are made to keep penalties consistent with those applied to similar cases. In recognition of the fact that the University is an educational institution with a rehabilitative point of view, penalties are assessed in accordance with conditions accompanying each offense. Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors. Penalties may be applied

retroactively to the date of the offense. Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a student violation of the Standards of Conduct. Additionally, official violation notifications are given by the appropriate office, and official records are maintained in that office.

(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

(a) Disciplinary Warning. A disciplinary warning is a notice that the student is violating or has violated the Standards of Conduct. It is used for minor violations and consists of a restatement of the regulation violated with an official warning concerning future action.

(b) Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct when it is evident the misconduct occurred with knowledge and awareness of applicable Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions. Reprimands may be given to students in either verbal or written form.

(c) Loss of Privilege. Loss of privilege is a penalty imposed most commonly cases involving violation of University rules governing hours, social standards, intramural sports, or misuse of University facilities. The loss of privilege is ordinarily established for a specific period of time, and actions are recorded in appropriate records. Privileges that maybe lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), participation in social activities, and use of certain University-controlled property (e.g., information technology resources).

(d) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer or his/her designee.

(e) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(f) Disciplinary Probation. Disciplinary probation means that a student is permitted to remain in the University on a probationary status. Should a violation occur during probation, the student is normally suspended. Disciplinary probation is recorded on the student's personnel file in the Office of Student Affairs. Conditions of probation are specific to the

individual case and may include loss of eligibility to serve as a student organization officer or participation in major student activities. Any specific probation conditions are described in a personal letter to the student. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.

(g) Suspension. The penalty of suspension is imposed in cases of serious or repeated misconduct or a violation of probation. A student who is suspended shall have his/her registration cancelled and is not eligible to apply for readmission for a designated period of time. Suspensions are always recorded on the student's permanent record. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member).

(h) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee Health Science Center. This penalty is used when the violation of one (1) or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.

(i) Revocation of Degree. Revocation of a degree means revoking a student's a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.

(4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:

(a) Disciplinary Warning. A disciplinary warning is used for minor violations of the Standards of Conduct and consists of a restatement of the Standard of Conduct violated with an official warning concerning future action.

(b) Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of

privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.

(c) Education. Student organizations or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer, Student Conduct Officer, and/or his/her designee.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Social Probation. This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Chief Student Affairs Officer or his/her designee.

(f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.

(g) Revocation of University Registration. In cases of serious misconduct, a student organization's University registration may be revoked.

(5) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct.

(6) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

1720-03-03-.06 NO CONTACT DIRECTIVE. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact

between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Chief Student Affairs Officer, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

1720-03-03-.07 INTERIM SUSPENSION.

(1) When the Chief Student Affairs Officer or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Chief Student Affairs Officer or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.

(2) An interim suspension shall be confirmed by a notice that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.

(3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Chief Student Affairs Officer or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's or student organization's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.

(4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Chief Student Affairs Officer or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or

participate in University-affiliated activities may be granted by the Chief Student Affairs Officer or his/her designee.

1720-03-03-.08 HEARING PROCEDURES.

(1) Unless otherwise specified in the published policies and procedures of the UT Health Science Center, a student charged with misconduct or who is entitled to an opportunity for a hearing will, upon request, be provided a hearing in accordance with the following procedures:

(a) Notice - A person charged with misconduct will receive written notification of the following:

1. The substance of the charge(s) against him/her.

2. The disciplinary action taken or proposed.

3. His/her right to a hearing should he/she wish to contest the charge(s) or action.

4. To whom a request for a hearing should be addressed.

5. That a request for a hearing must be made within five (5) days of the person's receipt of this notice.

6. His/her right to be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the hearing panel. An advisor is not permitted to: introduce evidence; raise objections; present arguments; address directly the members of the hearing panel, the student conduct officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor.

7. His/her rights to a hearing ~~in accordance with the contested case~~ under ~~provisions~~ ~~of~~ the Uniform Administrative Procedures Act, T.C.A. § 4-5-108 et seq. ("UAPA"). In the absence of a voluntary written waiver of his/her rights to a hearing under the provisions of the ~~T~~UAPA, a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the ~~T~~UAPA, Chapter 1720-01-05, and the hearing procedures in this Section .08 shall not apply.

(b) Hearing Panel - A requested hearing will be provided by a panel of individuals or a hearing examiner, selected in accordance with policies of UT Health Science Center or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center or his/her designee. The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor of the UT Health Science Center or his/her designee upon the request of any party to a hearing.

(c) Hearing Process - The chairman of a hearing panel or hearing examiner will conduct the hearing, without regard to technical rules of procedure, in such manner as will best serve the cause of justice within the following general guidelines:

1. Each party to a hearing will be afforded a full and fair opportunity to present all evidence including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.

2. The hearing panel or examiner will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.

3. Each party will have the right to question opposing witnesses.

4. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings.

5. The University will have the burden of providing, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charged will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.

6. Following the conclusion of the hearing, the hearing panel or examiner will consider the evidence and present written findings within a reasonable time.

7. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-03-03-.08(1)(d).

(d) In accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, the University will investigate

and resolve reports of sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. ~~In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~2. A prompt, thorough, and impartial investigation of the complaint;~~

~~3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~5. Notice of the outcome of the University's investigation;~~

~~6. Have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~7. Notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;~~

~~8. The same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;~~

~~9. Challenge the selection of any member of a hearing panel or a hearing examiner for good cause, which will be determined at the discretion of the Chancellor or his/her designee;~~

~~10. Be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;~~

~~11. The same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;~~

~~12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the hearing panel or examiner finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~

~~13. Not to be questioned personally by the accused student during the disciplinary hearing;~~

~~14. Submit a written impact statement to the hearing panel or examiner for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~

~~15. Notice of the decision of the hearing panel or examiner within three (3) business days of the disciplinary hearing; and~~

~~16. Appeal the decision of the hearing panel or examiner to the Chancellor and the President.~~

(2) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Chancellor ~~and the President~~.

(3) For purposes of this rule, the term "student" shall mean a student or a student organization.

(4) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend the procedural regulations described in this Chapter. If the procedures are suspended, he may substitute for them arrangements for handling disciplinary matters than will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

1720-03-03-.09 STUDENT IDENTIFICATION CARDS.

(1) All currently registered students are required to have a UT Health Science Center Student Identification Card. Lost and found I.D. cards should be reported to the Office of Campus Safety and Security. Replacement for lost cards may be obtained from the Office of Campus Safety and Security. A replacement charge will be assessed.

(2) In order to determine the identity of students, all students are required to present their University identification cards promptly on request of a University police officer or member of the administration or faculty of the University. Identification cards will not ordinarily be retained; however, a card may be retained if an emergency situation exists or if the card may be needed as evidence. The retained card, if valid, will be returned to the student as soon as possible

1720-03-03-.10 STUDENT HEALTH INSURANCE. All students are required to obtain basic health care and medical care insurance to protect themselves, their families, their professional health care associates and providers. The student may elect to enroll in the UT Health Science Center student health insurance plan or obtain equivalent health insurance with a private carrier. Students who fail to furnish proof of insurance coverage will be prevented from completing their registration for that academic term.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/25/2015, 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: 08/14/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC SMOX COUNTY

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

8/27/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/14/15

Effective on: 12/13/15

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 14 PM 1:38
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	University of Tennessee Board of Trustees
CAMPUS:	Martin
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209; 20 U.S.C. Section 1681; 20 U.S.C. Section 1092f; Elonis v. United States, 135 S.Ct. 2011 (2015)
EFFECTIVE DATES:	December 13, 2015 through June 30, 2016
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The University of Tennessee (UT) has proposed revisions to its student conduct rules that make those rules compliant with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f, and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking. From April 2011 through April 2014, the U.S. Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all UT campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will

issue final policies on sexual misconduct, domestic violence, dating violence, and stalking.

A proposed revision to the definition of the term, "weapon," Chapter 1720-02-05-.02(9) addresses concerns expressed by some members of the Tennessee General Assembly's Government Operations Committee about the potential overbreadth of the former definition.

A proposed revision to the definition of the term, "notice," Chapter 1720-02-05-.02(10) addresses concerns expressed by the Tennessee Attorney General's Office.

A proposed revision to the standards of conduct, Chapter 1720-02-05-.04(5), addresses a concern expressed by the Tennessee Attorney General's Office relating to Elonis v. United States, 135 S.Ct. 2011 (2015).

To address confusion expressed by some students, proposed revisions to the standards of conduct separate "disorderly" conduct from "lewd, indecent, or obscene conduct," but otherwise the language of the standards does not change.

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

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.

17

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

For Department of State Use Only

Sequence Number: 09-23-15
Rule ID(s): 6029
File Date: 9/14/15
Effective Date: 12/13/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

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

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

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

Chapter Number	**Chapter Title**
1720-05-01	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-05-01-.02	Definitions
1720-05-01-.04	Standards of Conduct
1720-05-01-.08	Hearing Procedures

RULES
OF
THE UNIVERSITY OF TENNESSEE
(MARTIN)

CHAPTER 1720-05-01
STUDENT RIGHTS AND RESPONSIBILITIES

1720-05-01-.01 INTRODUCTION.

(1) Students at the University of Tennessee at Martin are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(2) The University is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.

(3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

1720-05-01-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee at Martin.

(2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.

(3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.

(4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.

(5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.

(8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms~~and replica~~), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than ~~three~~ four (~~4~~3) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.

(10) The term "notice" means notice given in writing and transmitted by United

States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent.~~delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.~~

(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even

if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;

2. consent communicated by the other person on a previous occasion;

3. consent communicated to another person;

4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);

5. the sexual arousal of the other person;

6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;

7. currently or previously cohabitating with the other person;

8. the other person's attire;

9. the other person's reputation;

10. the other person's giving or acceptance of gifts; or

11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be

difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.

(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.

(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.

(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and

objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

(25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.

(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.

(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1720-05-01-.03 JURISDICTION.

(1) The Standards of Conduct, Chapter 1720-05-01-.04, apply to conduct that occurs on University-controlled property.

(2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University,

including, but not limited to, conduct which:

(a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;

(b) Involves another member of the University community; or

(c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

(3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.

(4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.

(5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

1720-05-01-.04 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct:

(1) Cheating, plagiarism, or any other act of academic dishonesty as described in Chapter 1720-05-01-.13.

(2) Providing false information to a University official.

(3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.

(4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.

(5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement ~~(including electronically)~~ that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Engaging in sexual misconduct, relationship violence, or stalking. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any

means is also prohibited.

(9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.

(10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.

(11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(12) Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(14) Engaging in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

~~(14)~~(15) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

~~(17)~~(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Department of Public Safety.

~~(18)~~(19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

~~(21)~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

~~(24)~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a

party or as a witness.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

~~(27)~~(28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

~~(28)~~(29) Committing an act that is prohibited by local, state, or federal law.

(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

~~(29)~~(31) Engaging in retaliation.

1720-05-01-.05 PENALTIES.

(1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.

(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

(a) Warning. A warning is a notice that the student is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.

(b) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).

(c) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Disciplinary Probation. Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Conditions of probation include loss of eligibility to join a student organization and to serve as an officer in a student organization. Other conditions are specific to the individual case and may include ineligibility to participate in certain student activities. Probation may be for a definite or indefinite period.

(f) Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the designated period of time does not exceed one (1) calendar year. Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.

(g) Indefinite Suspension. Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but

typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the University Council to lift the suspension. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.

(h) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student on the Martin campus. This penalty is used when the violation of one (1) or more Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.

(i) Revocation of Degree. Revocation of a degree means revoking a degree already awarded to a student by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.

(4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:

(a) Warning. A warning is a notice that the student organization is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.

(b) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.

(c) Education. Student organizations and/or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or

his/her designee.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Social Probation. This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming). Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Affairs or his/her designee.

(f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.

(g) Revocation of University Registration. In cases of serious misconduct, a student organization's University registration may be revoked.

(5) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct. Penalties may be applied retroactively to the date of the offense.

(6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

(7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

1720-05-01-.06 NO CONTACT DIRECTIVE. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require

that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive written or electronic notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

1720-05-01-.07 INTERIM SUSPENSION.

(1) When the Vice Chancellor for Student Affairs or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Affairs or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.

(2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay. The statement shall be delivered to the student in person, to the address the University has on file for the student, or to the student's University-provided e-mail account. The statement shall be delivered in person or via e-mail to the advisor to the student organization.

(3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.

(4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student or student organization might otherwise be eligible, as the Vice Chancellor for Student Affairs or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be

on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Affairs or his/her designee.

(5) When a student is placed on interim suspension from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

1720-05-01-.08 HEARING PROCEDURES.

(1) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:

(a) The substance of the charge(s) against him/her;

(b) The disciplinary action taken or proposed; and

(c) His/her rights to a hearing should he/she wish to contest the charge(s) and information concerning the process for requesting a hearing, including the requirement that a request for a hearing before the Disciplinary Hearing Board must be made within five (5) days of the student's receipt of the notice of the charges against him/her.

(2) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall have the following options for a hearing:

(a) An administrative hearing before the Student Conduct Officer;

(b) A hearing before the Disciplinary Hearing Board; or

(c) A hearing in accordance with the University's rules for conducting contested case ~~provisions~~ proceedings under ~~of~~ the ~~Tennessee~~ Uniform Administrative Procedures Act ("~~T~~UAPA"). All disciplinary cases that may result in suspension or permanent dismissal of a student, the revocation of a degree, or the revocation of registration of a student organization are subject to the contested case provisions of the ~~T~~UAPA. The University's procedures for conducting contested case hearings under the ~~T~~UAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case ~~hearings~~ proceedings are contained in Chapter 1720-01-3. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case ~~hearings~~ proceedings under the ~~T~~UAPA unless the student waives those procedures in writing and elects to have his or her case ~~disposed of~~ resolved in accordance with ~~the University procedures established by these rules~~Section .08(3) or Section .08(4).

(3) Administrative Hearing. A student charged with violating the Standards of Conduct has a right to resolve a disciplinary case through an administrative

hearing with the Student Conduct Officer by accepting responsibility for violating the Standards of Conduct. Following the student's written acceptance of responsibility and written waiver of the right to a hearing under the TUAPA, the Student Conduct Officer will assess a penalty that is appropriate under Chapter 1720-05-01-.05. Following the assessment of the penalty, the student may acknowledge the acceptance of the penalty in writing or appeal the penalty to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09. A student who resolves a disciplinary case through an administrative hearing with the Student Conduct Officer may only appeal the penalty to the Vice Chancellor for Student Affairs.

(4) Disciplinary Hearing Board.

(a) The Disciplinary Hearing Board is an ad hoc board composed of five (5) members of the University Council, in addition to the Vice Chancellor for Student Affairs, who shall serve as the non-voting chairperson of the Disciplinary Hearing Board. The Disciplinary Hearing Board hears cases of alleged violations of the Standards of Conduct and other cases deemed appropriate by the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall select the members of the Disciplinary Hearing Board from the membership of the University Council. A majority vote of the members present is required for all decisions of the board.

(b) A request for a hearing before the Disciplinary Hearing Board shall be made within five (5) days of the student's receipt of the notice of the charges against him/her. A hearing shall be scheduled promptly after receipt of the request for a hearing. A student shall be notified of the date, place, and time for the hearing at least seventy-two (72) hours in advance of the hearing. A student has no right to have a hearing before the Disciplinary Hearing Board unless the student waives the provisions of the TUAPA in writing.

(c) Members of the Disciplinary Hearing Board shall be impartial and anyone lacking such impartiality shall recuse himself/herself. The accused student has the right to challenge any member of the Disciplinary Hearing Board for good cause and request that he/she be dismissed and replaced. The chairperson of the Board determines whether to dismiss and replace a member of the Disciplinary Hearing Board.

(d) The chairperson of the Disciplinary Hearing Board will conduct the hearing, without regard to technical rules of procedures in such a manner as will best serve the cause of justice within the following general guidelines:

1. An accused student has a right to a hearing closed to the public.

In cases involving more than one (1) student, the chairperson may permit the hearings concerning each student to be conducted separately.

2. The chairperson shall rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused student has been advised of the charges against him/her and shall then read a statement describing the charges. A student who fails to appear before the Disciplinary Hearing Board following proper notice shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Dean of Students good cause for granting a continuance of the hearing. However, no student may be found to have violated the Standards of Conduct solely because the student failed to appear before the Disciplinary Hearing Board. In all cases, the evidence in support of the charges shall be presented to and considered by the Disciplinary Hearing Board.

3. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty, and the Board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.

4. The accused student may be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the Disciplinary Hearing Board. An advisor is not permitted to: introduce evidence; raise objections; present arguments; directly address the members of the Disciplinary Hearing Board, the Student Conduct Officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor. The accused student shall inform the Student Conduct Officer of the name of the student's advisor, if any, at least three (3) days before the hearing before the Disciplinary Hearing Board.

5. Each party to a hearing shall be given an opportunity to make opening and closing statements.

6. Each party to a hearing shall be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue. Each party will have the right to question opposing witnesses. Technical rules of evidence will not apply. Evidence which is irrelevant, immaterial, repetitious or voluminous may be limited or excluded. Hearsay evidence is admissible. If a not guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.

7. The Student Conduct Officer shall present the case on behalf of the University. The University shall have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the accused student shall have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.

8. The Board will consider all evidence presented, giving due consideration to the credibility or weight of each item presented. During Board deliberations all persons except the Board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.

9. After a determination of guilt by the Board, the Student Conduct Officer, on behalf of the University, shall present the previous disciplinary record of the accused student if any, and evidence of any other aggravating circumstances, to the Board together with the recommendation of the Student Conduct Officer as to an appropriate penalty.

10. After presentation of evidence by the Student Conduct Officer, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.

11. After the Board determines the penalty, the accused student shall be advised in writing of its decision within forty-eight (48) hours of the hearing.

12. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings. The results of the Board's decision shall be kept on official University forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Conduct and considered a confidential disciplinary record.

13. Appeals from decisions of the Disciplinary Hearing Board may be made to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09.

14. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-05-01-.08(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.

~~(e) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~2. A prompt, thorough, and impartial investigation of the complaint;~~

~~3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~5. Notice of the outcome of the University's investigation;~~

~~6. Have a disciplinary hearing conducted by the Disciplinary Hearing Board within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless the accused student chooses an administrative hearing under Chapter 1720-05-01-.08(3) or the circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~7. Notice of the date, time, and location of the hearing before the Disciplinary Hearing Board, the right to have the hearing closed~~

~~to the public, and the right to request rescheduling of the hearing for good cause;~~

~~8. The same access as the accused student to any information or documents that will be used by the Student Conduct Officer during the hearing before the Disciplinary Hearing Board, unless prohibited by law;~~

~~9. Challenge the seating of any Disciplinary Hearing Board member for good cause, which will be determined at the discretion of the Vice Chancellor for Student Affairs;~~

~~10. Be accompanied by an advisor of his/her choosing during the University's investigation or a hearing before the Disciplinary Hearing Board, but the advisor shall not be permitted to speak for the victim during a hearing;~~

~~11. The same opportunity as the accused student to be present during a hearing before the Disciplinary Hearing Board, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during a hearing before the Disciplinary Hearing Board;~~

~~12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Disciplinary Hearing Board finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~

~~13. Not to be questioned directly by the accused student during the hearing before the Disciplinary Hearing Board;~~

~~14. Submit a written impact statement to the Disciplinary Hearing Board or Student Conduct Officer for consideration during the sanctioning phase of an administrative or disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~

~~15. Notice of the decision of the Student Conduct Officer or Disciplinary Hearing Board within three (3) business days of an administrative or disciplinary hearing; and~~

~~16. Appeal the decision of the Student Conduct Officer, following an administrative hearing, or the Disciplinary Hearing Board to the Vice Chancellor for Student Development.~~

(5) In accordance with Title IX of the Education Amendments of 1972, the Jeanne

Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, the University will investigate and resolve reports of sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.

~~(5)~~(6) For purposes of this rule, the term "student" shall mean a student or a student organization.

1720-05-01-.09 APPEALS.

(1) Appeal. A decision of the Disciplinary Hearing Board, or a decision of the Student Conduct Officer concerning a penalty following an administrative hearing, may be appealed to the Vice Chancellor for Student Affairs.

(a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs within seven (7) calendar days of written notice of the decision of the Disciplinary Hearing Board or Student Conduct Officer. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.

(b) The request for appeal shall contain:

1. A statement that the student or student organization appeals the decision of the Disciplinary Hearing Board or Student Conduct Officer; and

2. A brief statement of the grounds for the appeal.

(c) All appeals to the Vice Chancellor for Student Affairs are written and heard based upon the record made before the Disciplinary Hearing Board.

(d) Pending the outcome of an appeal, the penalty specified in the decision of the Disciplinary Hearing Board shall not be imposed.

(2) The Vice Chancellor for Student Affairs may:

(a) Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;

(b) Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;

(c) Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or

(d) Overturn the decision of the Disciplinary Hearing Board.

(3) The decision of any board or administrative officer of the University of Tennessee at Martin is subject to review by the Chancellor.

1720-05-01-.10 EMERGENCY POWERS. When, in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the University and at the same time safeguard the basic rights of the students and student organizations.

1720-05-01-.11 INVOLUNTARY MEDICAL WITHDRAWAL OR SUSPENSION.

(1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(1) Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision.

(2) Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.

(3) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W' or "I," whichever is deemed appropriate by the faculty member involved.

(4) Readmission.

(a) A student who is involuntarily withdrawn under this rule may not be

readmitted to the University before the start of the next semester or without the approval of the Vice Chancellor for Student Affairs. The student shall also meet all of the admission requirements of the University and of the school or college in which he/she wishes to be readmitted.

(b) A student shall submit a written request for permission to reapply to the University with the Vice Chancellor for Student Affairs by October 1 for Spring enrollment, by February 1 for Summer enrollment, and by May 1 for Fall enrollment. The student's written request shall include an explanation of why the Vice Chancellor for Student Affairs should allow the student to reapply and an explanation of the student's plan to transition successfully back into the academic community.

(c) The Vice Chancellor for Student Affairs may require the student to provide the panel of individuals who recommended that the student be involuntarily withdrawn with proof that the condition that caused the withdrawal is no longer present or that the condition is under control through treatment such that the student does not present a direct threat to the health or safety of him/herself or others and will not disrupt the normal educational processes of the University. Proof may consist of a current medical or mental health evaluation, demonstration of ongoing medical or mental health treatment, and a plan for treatment upon readmission. The panel may request any other information or documentation that it deems necessary. In exceptional circumstances, the panel may request a second, independent opinion of a qualified medical or mental health professional paid for by the University. In cases where the Vice Chancellor for Student Affairs has imposed other conditions for readmission, it is the responsibility of the student to provide documentation of compliance with those conditions.

(d) The panel's recommendation concerning reenrollment or readmission shall be provided to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. The decision of the Vice Chancellor for Student Affairs is final and may not be appealed.

1720-05-01-.12 INSPECTION AND SEARCH POLICIES.

(1) Entry by University authorities into occupied rooms in residence halls will be divided into three (3) categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property,

or the building itself.

(2) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.

(3) Search: On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his/her designee, which specifies the reasons for the search and the objects or information sought, or unless they enter in compliance with federal or state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his/her designee is present.

(4) If the search reveals objects the possession of which violates a law or a University rule, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.

1720-05-01-.13 ACADEMIC DISHONESTY. The University of Tennessee at Martin has chosen as its primary objective quality undergraduate education. Commitment to this objective must include an obligation by all members of the University community to promote and protect the highest standards of integrity in study, research, instruction and evaluation. Dishonesty or unethical behavior does not belong at an institution dedicated to the promotion of knowledge and learning. Integrity of the academic process requires fair and impartial evaluation by faculty and honest academic conduct by students. A student may be found to have violated this obligation if he/she:

(1) Refers during an academic evaluation to materials, sources, or devices not authorized by the instructor;

(2) Provides assistance during an academic evaluation or assignment to another person in a manner not authorized by the instructor;

(3) Receives assistance during an academic evaluation or assignment from another person in a manner not authorized by the instructor;

(4) Possesses, buys, sells, obtains, or uses a copy of any materials intended to be used as an instrument of academic evaluation in advance of its administration;

(5) Acts as a substitute for another person in any academic evaluation or assignment;

(6) Utilizes another person as a substitute for him/herself in any academic evaluation or assignment;

(7) Practices any form of deceit in an academic evaluation or assignment;

(8) Depends on the aid of others, in a manner expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;

(9) Provides aid to another person, knowing such aid is expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;

(10) Indulges in plagiarism by presenting as one's own, for academic evaluation or assignment, the ideas, representations, or works of another person or persons without customary and proper acknowledgment of sources;

(11) Submits the work of another person in a manner that represents the work to be one's own;

(12) Knowingly permits one's work to be submitted by another person without the instructor's authorization;

(13) Attempts deceitfully to influence or change one's academic evaluation or record; or

(14) Indulges in conduct that is so disruptive as to infringe upon the rights of an instructor or fellow students during a class or examination session.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/25/2015, 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: 08/14/15

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNNETTE RUSSELL NOTARY PUBLIC STATE OF TENNESSEE

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

8/28/2015
Date

Department of State Use Only

Filed with the Department of State on: 9/14/15

Effective on: 12/13/15

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 14 PM 1:39
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Medicaid Covered Services
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 4-5-208, 71-5-105, and 71-5-109
EFFECTIVE DATES:	September 30, 2015 through March 28, 2016
FISCAL IMPACT:	Decreases state expenditures by $2,984,000
STAFF RULE ABSTRACT:	This emergency rule reduces expenditures by limiting coverage for buprenorphine-containing products for treatment of opiate addiction and by limiting payments for additional urine drug test codes.

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 anticipated to have an impact on local governments.

26

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

For Department of State Use Only

Sequence Number: 09-55-15
Rule ID(s): 0054
File Date (effective date): 9-30-15
End Effective Date: 3-28-16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
X Emergency Rule

Revision Type (check all that apply):
X Amendments
__ New
__ Repeal

Statement of Necessity:

The Appropriations Act, Public Chapter 427, effective July 1, 2015, requires the Bureau of TennCare to reduce expenditures for Buprenorphine-containing products and limit payments for an expanded list of urine drug screen test codes. The reduction will be accomplished by limiting buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days, and by excluding urine drug screens in excess of twelve (12), with the addition of four confirmation urine drug screens and two (2) specific assay tests during a calendar year.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when it is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve implementation by October 1, 2015.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions

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

Rule 1200-13-13-.04 Covered Services, Paragraph (1), Subparagraph (c), Part 9 is deleted in its entirety and replaced with new Parts 9 and 10 and the current Part 10 is renumbered as Part 11, which shall read as follows:

9. Buprenorphine products for opiate addiction treatment for persons aged 21 and older are restricted as follows:

   (i) Dosage shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.

   (ii) Therapy shall be limited to a total lifetime period of coverage not to exceed a total of 732 therapy days, which do not have to be consecutive. For enrollees who are pregnant on day 732 of treatment, the treatment may continue until the enrollee is no longer pregnant.

   (iii) Effective October 1, 2015, enrollees who have exceeded 549 days of treatment will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.

10. Sedative hypnotic medications for persons aged 21 and older shall not exceed fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta, one hundred forty milliliters (140 ml) per month of chloral hydrate, or one (1) bottle every sixty (60) days of Zolpimist.

11. Allergy medications.

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

Rule 1200-13-13-.10 Exclusions, Paragraph (3), Subparagraph (a), Part 17, Subpart (vii) is deleted in its entirety and replaced with a new Subpart (vii) which shall read as follows:

(vii) Buprenorphine-containing products used for treatment of opiate addiction in excess of the covered amounts listed below:

   (I) Dosage of sixteen milligrams (16 mg) per day for a period of up to six (6) months (183 days) from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy;

   (II) Dosage of eight milligrams (8 mg) per day after the sixth (6th) month (183rd day) of therapy;

   (III) Total lifetime coverage of 732 therapy days (24 months), which do not have to be consecutive, but if the enrollee is pregnant on day 732 of therapy, treatment may

continue until the conclusion of pregnancy; and

(IV) Effective October 1, 2015, enrollees who have exceeded 549 days (18 months) of therapy will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.

Rule 1200-13-13-.10 Exclusions, Paragraph (3), Subparagraph (b), Part 88 is amended by inserting the punctuation and language ", four (4) confirmation urine screens and two (2) specific assay tests" between the number "(12)" and the word "during" so that as amended the Part shall read as follows:

88. Urine drug screens in excess of twelve (12), four (4) confirmation urine screens and two (2) specific assay tests during a calendar year.

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

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

Date: 9/8/2015

Signature: [signature]

Name of Officer: Darin J. Gordon

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

KATHY CROCKARELL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: September 8, 2015

Notary Public Signature: Kathy Crockarell

My commission expires on: January 8, 2019

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

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9-30-15

Effective for: 180 *days

Effective through: 3-28-16

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

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 30 PM 2:24
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Standard Covered Services
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 4-5-208, 71-5-105, and 71-5-109
EFFECTIVE DATES:	September 30, 2015 through March 28, 2016
FISCAL IMPACT:	Decreases state expenditures by $2,984,000
STAFF RULE ABSTRACT:	This emergency rule reduces expenditures by limiting coverage for buprenorphine-containing products for treatment of opiate addiction and by limiting payments for additional urine drug test codes.

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 anticipated to have an impact on local governments.

27

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

For Department of State Use Only

Sequence Number: 09-56-15
Rule ID(s): 6055
File Date (effective date): 9-30-15
End Effective Date: 3-28-16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
X Emergency Rule

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

Statement of Necessity:

The Appropriations Act, Public Chapter 427, effective July 1, 2015, requires the Bureau of TennCare to reduce expenditures for Buprenorphine-containing products and limit payments for an expanded list of urine drug screen test codes. The reduction will be accomplished by limiting buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days, and by excluding urine drug screens in excess of twelve (12), with the addition of four confirmation urine drug screens and two (2) specific assay tests during a calendar year.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when it is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve implementation by October 1, 2015.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions

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

Rule 1200-13-14-.04 Covered Services, Paragraph (1), Subparagraph (c), Part 9 is deleted in its entirety and replaced with new Parts 9 and 10 and the current Part 10 is renumbered as Part 11, which shall read as follows:

9. Buprenorphine products for opiate addiction treatment for persons aged 21 and older are restricted as follows:

   (i) Dosage shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.

   (ii) Therapy shall be limited to a total lifetime period of coverage not to exceed a total of 732 therapy days, which do not have to be consecutive. For enrollees who are pregnant on day 732 of treatment, the treatment may continue until the enrollee is no longer pregnant.

   (iii) Effective October 1, 2015, enrollees who have exceeded 549 days of treatment will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.

10. Sedative hypnotic medications for persons aged 21 and older shall not exceed fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta, one hundred forty milliliters (140 ml) per month of chloral hydrate, or one (1) bottle every sixty (60) days of Zolpimist.

11. Allergy medications.

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

Rule 1200-13-14-.10 Exclusions, Paragraph (3), Subparagraph (a), Part 17, Subpart (vii) is deleted in its entirety and replaced with a new Subpart (vii) which shall read as follows:

(vii) Buprenorphine-containing products used for treatment of opiate addiction in excess of the covered amounts listed below:

   (I) Dosage of sixteen milligrams (16 mg) per day for a period of up to six (6) months (183 days) from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy;

   (II) Dosage of eight milligrams (8 mg) per day after the sixth (6th) month (183rd day) of therapy;

   (III) Total lifetime coverage of 732 therapy days (24 months), which do not have to be consecutive, but if the enrollee is pregnant on day 732 of therapy, treatment may

continue until the conclusion of pregnancy; and

(IV) Effective October 1, 2015, enrollees who have exceeded 549 days (18 months) of therapy will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.

Rule 1200-13-14-.10 Exclusions, Paragraph (3), Subparagraph (b), Part 89 is amended by inserting the punctuation and language ", four (4) confirmation urine screens and two (2) specific assay tests" between the number "(12)" and the word "during" so that as amended the Part shall read as follows:

89. Urine drug screens in excess of twelve (12), four (4) confirmation urine screens and two (2) specific assay tests during a calendar year.

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

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

KATHY CROCKARELL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 9/8/2015

Signature: [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: September 8, 2015

Notary Public Signature: Kathy Crockarell

My commission expires on: January 8, 2019

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

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

Filed with the Department of State on: 9-30-15

Effective for: 180 *days

Effective through: 3-28-16

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

Tre Hargett
Secretary of State

RECEIVED
2015 SEP 30 PM 2:25
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	Hospitalization Program
STATUTORY AUTHORITY:	Tennessee Code Annotated Sections 4-5-202, 71-5-105, 71-5-109, and 71-5-2803
EFFECTIVE DATES:	December 20, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Amendment to Rule Chapter 1200-13-5 Hospitalization Program: This amendment replaces an emergency rule chapter that was adopted to ensure full implementation of hospital payment rate variation corridors set out in Chapter 276 of the Public Acts of 2015. The rule chapter defines the specific activities required of the TennCare MCOs and the hospitals participating in TennCare to fully implement the rate variation corridors.

Public Hearing Comments

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

There were no public comments on this rule chapter.

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

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

Impact on Local Governments

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

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

8

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

For Department of State Use Only

Sequence Number: 09-33-15
Rule ID(s) 6045
File Date: 9/21/15
Effective Date: 12/20/15

Rulemaking Hearing Rule(s) Filing Form

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

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

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

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

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

Chapter Number	**Chapter Title**
1200-13-5	Hospitalization Program
Rule Number	**Rule Title**
1200-13-5-.01	Definitions
1200-13-5-.02	Determination of Reimbursable Cost
1200-13-5-.03	Approval of the Department Required for Participants Cost Report Required
1200-13-5-.04	Cost Report Required
1200-13-5-.05	Billing Procedure
1200-13-5-.06	Application of Prospective Payment Method
1200-13-5-.07	Provider Exempted from Prospective Payment System
1200-13-5-.08	Prospective Payment Methodology
1200-13-5-.09	Minimum Occupancy Adjustment
1200-13-5-.10	Resident and Intern Adjustment
1200-13-5-.11	High Medicaid Volume Incentive
1200-13-5-.12	Other Adjustment to the Prospective Rate
1200-13-5-.13	New Providers
1200-13-5-.14	Lower of Cost or Charges Limit
1200-13-5-.15	Rate Notification and Effective Date
1200-13-5-.16	Method for Paying Providers which are Exempt from Prospective System
1200-13-5-.17	Audit

~~RULES~~
~~OF~~
~~TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT~~
~~DIVISION OF MEDICAID~~

~~CHAPTER 1200-13-5~~
~~HOSPITALIZATION PROGRAM~~

~~TABLE OF CONTENTS~~

~~1200-13-5-.01~~	~~Definitions~~	~~1200-13-5-.10~~	~~Resident and Intern Adjustment~~
~~1200-13-5-.02~~	~~Determination of Reimbumable Coat~~	~~1200-13-5-.11~~	~~High Medicaid Volume Incentive~~
~~1200-13-5-.03~~	~~Approval of the Department Required for Participants Cost Report Required~~	~~1200-13-5-.12~~	~~Other Adjustment to the Prospective Rate~~
		~~1200-13-5-.13~~	~~New Providers~~
~~1200-13-5-.04~~	~~Cost Report Required~~	~~1200-13-5-.14~~	~~Lower of Cost or Charges Limit~~
~~1200-13-5-.05~~	~~Billing Procedure~~	~~1200-13-5-.15~~	~~Rate Notification and Effective Date~~
~~1200-13-5-.06~~	~~Application of Prospective Payment Method~~	~~1200-13-5-.16~~	~~Method for Paying Providers which are Exempt from Prospective System~~
~~1200-13-5-.07~~	~~Providers Exempted from Prospective Payment System~~	~~1200-13-5-.17~~	~~Audit~~
~~1200-13-5-.08~~	~~Prospective Payment Methodology~~	~~1200-13-5-.18~~	~~Termination of Medicaid Hospitalization Program~~
~~1200-13-5-.09~~	~~Minimum Occupancy Adjustment~~		

~~**1200-13-5-.01 DEFINITIONS.** The following definitions shall apply to rules 1200-13-5-.02 through 1200-13-5-.*15* inclusive, unless otherwise indicated.~~

~~(1) *Capital Costs* means those costs which are required or allowed by Title XVIII principles to be included in all depreciation columns on line 72 of worksheet B of HCFA form 2552-81(11-81). Capital costs shall not include costs associated with non-reimbursable cost centers.~~

~~(2) *Medical Education Costs* means those costs associated with a nursing school or intern resident services in an approved residency program which are required or allowed by Title XVIII principles to be included in columns 18 and 19 of line 72 on worksheet B of HCFA form 2552-8-1 (11-8-1). Medical education costs shall not include costs associated with non-reimbursable cost centers, nor shall they include costs for routine in-service training.~~

~~(3) *Hospital-Based Physician Costs* means physician costs applicable to Medicaid beneficiaries which are required or allowed by Title XVIII principles to be included on line 12 of Column 5f of Part I of worksheet D-3 of HCFA form 2552-81(11-81). Such costs shall not be allowable for services provided on or after October 1, 1983.~~

~~(4) *Utilization Ratio* means the ratio of inpatient days attributable to patients determined eligible for Medicaid by the State of Tennessee to total inpatient days.~~

~~(5) *Medicaid Day* means any part of a day including the day of admission in which a person determined eligible for Medicaid by the State of Tennessee is admitted as an inpatient with the intention of remaining overnight. The day of discharge is not counted as a day. If admission and discharge occur on the same day, the day is considered one inpatient day.~~

~~(6) *Approved Residency Program* means: (1) intern or resident in training teaching program approved by the Council on Medical Education of the American Medical Association, or in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association; or, (2) in the case of a hospital or osteopathic hospital with an intern or resident in training program in the field of dentistry, under a teaching program approved by the Council on Dental Education of the American Dental Association.~~

~~(7) *Operating Component* means those costs, applicable to inpatient services only, which are required or allowed by Title XVIII principles to be included on line 10 of Part 1 of schedule E-5 of HCFA form 2552-81 (11-81),~~

less the portion, which is attributable to patients determined eligible for Medicaid by the State of Tennessee, of depreciation, medical education costs, and hospital-based physician costs, plus an allowance for the inpatient routine nursing salary differential which was repealed by Medicare on October 1, 1982.

(8) *Pass Through Component* means the share which is attributable to patients determined eligible for Medicaid by the State of Tennessee of actual capital costs and actual medical education costs. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass through component.

(9) *Title XVIII principles* means, except where indicated otherwise, those Medicare principles which are applicable to hospitals, which were in effect on October 1, 1982, and which are described at 42 CFR, 405.

(10) *Base Year Cost Report* means the cost report for the next to the last 12 month cost reporting period preceding the first cost reporting period subject to prospective payment.
EXAMPLE:

1st Year Subject to Prospective Payment	*Base Year*
1/1/84 to 12/31/84	1/1/82 to 12/31/82
7/1/84 to 6/30/85	7/1/82 to 6/30/83

If a hospital's cost reporting period ending on or after September 30, 1982 was for less than 12 months, the cost report for the most recent 12 month cost reporting period ending before September 30, 1982 will be used. The Commissioner of the Department of Health and Environment reserve the right to rebase the reimbursement system described in Chapter 12-13-5 of the Rules of the Department of Health and Environment at such time deemed necessary.

(11) *Department* means the Tennessee Department of Health and Environment.

Authority. *T. C.A. § §4-5-202, 12-4-301, 71-5-105 and 71-5-109,* Public *Chapter 913* of *the Acts* of 1992. ***Administrative History.*** Original rule filed June 26,1985; effective July 26,1*985. Amendment filed January* 13,1987; *effective* February 27, *1987. Amendment* filed September 25, 1992; *effective November* 9, 1992.

1200-13-5-.02 DETERMINATION OF REIMBURSABLE COST. The Comptroller of the Treasury in accordance with the Department's rules and regulations shall make the determination of reimbursable per diem cost for hospitals.

Authority: *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985, effective July 26, 1985.*

1200-13-5-.03 APPROVAL OF THE DEPARTMENT REQUIRED FOR PARTICIPANTS. Only those institutions or distinct parts thereof certified by the Department in accordance with the General Rule 1200-13-1-.05(2) as rendering hospital care and contracting with Medicaid may participate and be reimbursed as providers under these provisions. The Department shall notify the Comptroller of the Treasury when a provider enters the program and when its participation terminates.

Authority: *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26, 1985.*

1200-13-5-.04 COST REPORTS REQUIRED.

(1) In order to be eligible for payment by the Medicaid program for hospital services provided to Tennessee Medicaid beneficiaries, providers, including those paid by a prospective method, are required at each provider's Fiscal year end, upon termination of provider status, change in ownership, or enrollment as a new provider, as per rule 1200-13-5-.13, to submit to the Comptroller of the Treasury an annual cost report on forms designated by the Department. This report shall be submitted not later than three months from the end of each provider's fiscal year. Such cost reports must be completed in accordance

~~with the Medicare principles of cost reimbursement set out in the Medicare Provider Reimbursement Manual, in effect on October 1, 1982, except where the Department may specify otherwise by these rules. All covered services are to be in accordance with the Medicaid Program definition of covered services.~~

~~(2) Providers which fail to submit cost reports which comply with Title XVIII principles in effect on October 1, 1992 and described at 42 CFR 405 shall be subject to the sanctions specified in *T.C.A.* §71-5-130.~~

~~(3) To be eligible to receive payment, contracting hospitals shall use uniform hospital statistics and classification of accounts as published by the American Hospital Association for all accounting records, or any other acceptable accounting methods approved by the Department of Health in consultation with the Comptroller and the Tennessee Hospital Association. Any contracting hospital that does not adopt the uniform classification of accounts, or that does not submit certified statements when required by the Department of Health will be subject to the sanctions specified in *T.C.A. §71-5-130.*~~

~~(4) After a period of five years following the implementation of the TennCare Program on January 1, 1994, amended or corrected hospital cost reports with claims for reimbursement for services prior to January 1, 1994 shall not be accepted.~~

~~***Authority**: T.C.A. §§14-23-105, 14-23-109, 71-5-105, 71-5-109 and 4-5-202. **Administrative History**: Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed January 30, 1989; effective March 16, 1989. Amendment filed April 14, 1989; effective May 8, 1989. Amendment filed October 14, 1998; effective December 28, 1998.*~~

~~**1200-13-5-.05 BILLING PROCEDURE.** Institutions or distinct parts thereof rendering hospital care shall bill the Department or other agency or organization designated by the Department on the forms and in the manner designated. No provider shall charge for Medicaid patients more than is charged for private paying patients for equivalent accommodations and services.~~

~~***Authority**: T.C.A. §§14-23-105 and 14-23-109. **Administrative History**: Original rule filed June 26,1985; effective July 26, 1985.*~~

~~**1200-13-5-.06 APPLICATION OF PROSPECTIVE PAYMENT METHOD.** With respect to cost reporting periods on or after the effective date of this rule, all Medicaid providers of hospital care, except those exempted by the provisions of rule 1200-13-5-.07 shall be paid for inpatient services by a prospective method as set out in rules 1200-13-5-.08 through 1200-13-5-.15 inclusive.~~

~~***Authority**: T.C.A. §§14-23-105 and 14-23-109. **Administrative History**: Original rule filed June 26,1985; effective July 26, 1985.*~~

~~**1200-13-5-.07 PROVIDERS EXEMPTED FROM PROSPECTIVE PAYMENT SYSTEM.** The prospective payment system shall not apply to:~~

~~(1) Long-term care facilities (hospitals which have an average length of stay of more than 25 days).~~

~~(2) Hospitals which elect not to submit a cost report which have less than $100,000 annually, based on the State of Tennessee's fiscal year, in total charges to patients determined eligible for Medicaid by the State of Tennessee; the annual total charges does not include charges associated with transplants covered by Tennessee Medicaid and are reimbursed in accordance with rule 1200-13-1-.06(18)(f)2.~~

~~Such providers shall be reimbursed an amount not to exceed 80% of reasonable charges for covered item billed by the provider. Reasonable charges are those which are charged by comparable providers for similar services. In the event that providers exceed $100,000 in total Tennessee Medicaid charges annually:~~

~~(a) In-state hospitals or out of state hospitals in contiguous medical marketing areas, will be treated as new providers as specified in rule 1200-13-5-.13.~~

~~(b) All other hospitals will be reimbursed as specified in rule 1200-13-5-.16(6).~~

~~(3) Outpatient services~~

~~***Authority:*** *T.C.A. §§12-4-301, 14-23-105, 14-23-109, 71-5-105, 71-5-109, and 4-5-202.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed November 10, 1988; effective December 25, 1988. Amendment filed May 8, 1991; effective June 22, 1991.*~~

~~**1200-13-5-.08 PROSPECTIVE PAYMENT METHODOLOGY.**~~

~~(1) The prospective payment will be made as a rate per inpatient day. Each facility's reimbursable inpatient costs will be determined in accordance with Title XVIII principles, from a base year cost reporting period. Costs will be separated into an operating component and a pass-through component. A trending factor will be applied to the operating rate component only. The prospective rate will be the sum of the trended operating component and the untrended pass-through component, plus or minus adjustments for minimum occupancy, (effective October 1, 1989, Tennessee Medicaid will not impose a minimum occupancy penalty), resident and intern costs, Medicaid disproportionate share and other adjustments as provided in rule 1200-13-5-.12. Tennessee Medicaid costs will be determined by a computed utilization ratio from form HCFA-2552.~~

~~(a) Except for inpatient hospital days involving approved organ transplants, the first twenty (20) days per fiscal year will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only), and Medicaid disproportionate share adjustment (MDSA) components. For medically necessary days in excess of twenty (20) per fiscal year, reimbursement will be made at 60 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Approved inpatient days involving organ transplants will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Admission and stays involving organ transplants that span fiscal years will be reimbursed as if the entire stay had occurred during the first fiscal year.~~

~~(2) Adjustments to Base Period Costs. It may be necessary to adjust base year cost reports to make the base period costs comparable to inpatient costs incurred in the prospective period, such as costs to be incurred by hospitals required to enter the Social Security system beginning January 1, 1984. Therefore, hospitals submitting form HCFA-1008 to their Medicare intermediary should send a copy of this form to the Comptroller of the Treasury. For hospitals which do not submit form HCFA-1008, appropriate adjustments will be made based on the best available information.~~

~~(3) Pass Through Component.~~

~~(a) Each facility's initial prospective rate will be based on the base year cost report and will include a pass-through component consisting of the portion of capital costs and medical education costs which is attributable to patients determined eligible for Medicaid by the State of Tennessee. The pass through component may vary from year to year depending on each facility's actual capital costs and medical education costs and will not be computed until the facility's cost report is received. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass-through component.~~

~~(b) Additional capital costs due to revalued assets will be recognized only when an existing provider is purchased by another provider in a bona fide sale (arms length transaction). The new value for reimbursement purposes shall be the lesser of (1) the purchase price of the asset at the time of the sale, (2) the fair market value of the asset at the time of the sale (as determined by an MAI appraisal), (3) current reproduction cost of the asset depreciated on a straight line basis over its useful life to the time of the sale, or (4) for facilities undergoing a change of ownership on or after July 18, 1984, the acquisition cost to the first owner of record on or after July 18, 1994. The cost basis of depreciable assets in a sale not considered bona fide is additionally limited to (5) the seller's cost basis less accumulated depreciation. The~~

purchaser has the burden of proving that the transaction is a bona fide sale should the issue arise. Gains realized from the disposal of depreciable assets while a provider is participating in the program are to be a deduction from allowable capital costs.

(c) The payment of return on equity will be determined by Medicare principles of cost reimbursement, 42 CFR 405, in effect on August 1, 1983 providing that, effective April 20, 1983, return on equity shall be adjusted to reflect 100% of the average rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

EXAMPLE

Base Year:	12/31/82
Base Year Cost Report Received	05/01/83
Initial Prospective Rate Determined	06/01/83
Beginning of Prospective Payment	01/01/84
12/31/83 Cost Report Received	05/01/94
12/31/83 Cost Report Rate Adjustment Completed	06/01/84

In this example, the initial prospective rate continues until June 1, 1984. On June 1, 1984, the rate is adjusted (for service dates on or after June 1, 1984) for the Tennessee Medicaid share of the actual capital costs, medical education costs, hospital based physician costs, and return on equity (for proprietary providers only) reported on the December 31, 1983, cost report.

(d) Beginning with fiscal years beginning July 1, 1987, and later, capital costs will be reduced by 3.5% for dates of services July 1, 1987 through September 30, 1987, by 7% for dates of service October 1, 1987 through December 31, 1987, by 12% for dates of service January 1, 1988 through September 30, 1988, and by 15% for dates of service October 1, 1988 through September 30, 1989, by 0% for dates of service October 1, 1989 through December 31, 1989, and by 15 % for dates of service January 1, 1990 and later. Reduction will be figured into year end final settlements. Hospitals designated as Sole Community Hospitals are exempt from percentage reduction in capital costs. Upon the effective date of these rules, hospitals will be reimbursed 100% of their capital costs.

(4) Operating Component. Each facility's initial prospective rate shall include an operating component which is computed from the base year cost report. The operating component will be trended forward each year. Trending to the new rebased year, (1988 cost reports or if not available the prior cost report) will be computed by utilizing the indexing rate recommended by the Prospective Payment Assessment Commission, applied from the end of the hospital's fiscal year to October 1, 1989.

Thereafter the trending index shall be that rate of increase on prospective payments as recommended by the Prospective Payment Assessment Commission and as published in the *Tennessee Administrative Register*. The trending indexes above shall be applied from October 1, 1989, to the midpoint of the state's fiscal year, no earlier than December 31, 1990, and shall be effective the first of the state's fiscal year, no earlier than July 1, 1990. When necessary, indexes will be prorated to correspond to a provider's year end. Each provider will be notified of its new operating rate due to indexing within 30 days of the beginning of the state's fiscal year.

Authority: *T.C.A. §§4-5-202, 12-4-301, 71-5-105 and 71-5-109; Public Chapter 913 of the Acts of 1992.* ***Administrative History.*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed February 21, 1986; effective March 23, 1986. Amendment filed September 12, 1986, effective October 27, 1986. Amendment filed May 29, 1987, effective July 13, 1987. Amendment filed June 2, 1988, effective July 17, 1988. Amendment filed August 8, 1990, effective September 22, 1990. Amendment filed October 21, 1991; effective December 5,, 1991. Amendment filed September 25, 1992; effective November 9, 1992.*

1200-13-5-.09 MINIMUM OCCUPANCY ADJUSTMENT. Capital costs shall be adjusted each year, using the formula set out below, if a facility's occupancy rate, based on staffed beds during the year, is below a minimum level. If a hospital exceeds its minimum occupancy rate, the formula is not applied. The minimum level is as follows:

Hospitals over 100 beds - 70%
Hospitals with 100 beds or fewer - 60%

The adjustments will be computed as follows and will be made at the same time as the pass through adjustment as set out in rule 1200-13-5-.15.

$$ACC = TCC \times \frac{TBD}{ABD\ (Y)}$$

ACC = allowable capital costs
TCC = total capital costs
TBD = total bed days used during the period
ABD = total bed days available during the period
Y = .6 for hospitals with 100 beds or fewer
.7 for hospitals over 100 beds

All references to beds means staffed beds. Staffed beds mean those beds which are equipped and available for patient use. Any beds or hospital wing which is unavailable for patient use, such as being closed for reasons including but not limited to, painting, maintenance, or insufficient nursing staff will not be considered staffed beds. It shall be the responsibility of the provider to determine, at least monthly, its number of staffed beds. A schedule showing the number of staffed and unstaffed beds, along with the reasons for being unstaffed, must be submitted with the cost report. This schedule is subject to audit in accordance with rule 1200-13-5-.17. If no schedule of staffed beds is received, staffed beds will be the number of beds at the end of cost report period. Effective October 1, 1989 Tennessee Medicaid will not impose a minimum occupancy penalty.

***Authority**: T.C.A. §§4-5-202, 12-4-301,14-23-105,14-23-109,71-5-105, and 71-5-109. **Administrative History**: Original rule filed June 26, 1985; effective July 26,1985. Amendment filed August 8,1990; effective September 22, 1990.*

1200-13-5-.10 RESIDENT AND INTERN COST ADJUSTMENT.

(1) On the basis of the ratio of full-time equivalent residents and interns to total beds, a resident and intern cost adjustment shall be granted to teaching facilities having an approved residency program. Such facilities will be given this adjustment independent of the Medicaid disproportionate share adjustment. The resident and intern cost adjustment shall not be subject to trending. The cost adjustment shall be calculated using the following formula but shall not exceed 10%, and will be made at the same time as the pass through adjustment.

$$RI = 1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1 \right]$$

(2) For purposes of this adjustment, hospitals are to report only full-time equivalent interns and residents on form HCFA 1008, Part 1. For years when form 1008 is no longer in effect, hospitals must submit their number of full-time equivalent interns and residents with their cost report. The number of full-time equivalent interns and residents is the sum of: (a) interns and residents employed 35 hours or more per week, and (b) one half of the total number of interns and residents working less that 35 hours per week regardless of the number of hours worked.

***EXAMPLE** - assuming no high Medicaid volume incentive or minimum occupancy adjustment.*

		Year 1	Year 2	Year 3
1.	Operating Component Prior to Trending	$250.00	$277.50	$299.70
2.	Pass Through Component	25.00	30.00	35.00
3.	Basis for RI adjustment	275.00	307.50	334.70
4.	RI Adjustment at 8% (line 3 x .08)	22.00	24.60	26.78
5.	Trend Factor for Operating Component	11%	8%	7%
6.	Trended Operating Component (line 1 x *line 5* + 100%)	277.50	299.70	320.69

~~7. Prospective Rate (line 2 + line 4 +line 6)~~	~~$324.50~~	~~$354.30~~	~~$382.46~~

~~***Authority**. T.C.A. §§4-5-202, 14-23-10,5, 14-23-109, 71-5-105 and 71-5-109. **Administrative History**. Original rule filed June 26, 1985, effective July 26, 1985. Amendment filed April 29, 1986; effective May 29, 1986. Amendment filed December 30, 1986, effective February 13,1987. Amendment filed December 8,1989; effective January 22, 1990.*~~

~~1200-13-5-.11 MEDICAID DISPROPORTIONATE SHARE AJUSTMENT (MDSA).~~

~~(1) In accordance with the Medicaid State Plan, hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio over 8% will be provided a payment incentive. The Medicaid disproportionate share adjustment shall not be subject to trending and shall be based on cost reports with fiscal year ending 6/30/86 and later. The incentive will be the higher of (a) or (b) but shall not exceed 17% and (a) + (c) or (b) + (c) shall not exceed 22%:~~

~~(a) The prospective rate will be adjusted upward by 3% for each 1% increment in the utilization rate above 8%.~~

~~(b) The prospective rate will be adjusted upward by 3% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000.~~

~~(c) The prospective rate will be adjusted upward by 5 % if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this incentive.~~

~~Also, in order to receive incentive (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(2) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid, or a utilization ratio over 14% will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%.~~

~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14%;~~

~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~

~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~

~~Also, in order to receive adjustment (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. If no inpatient charity care is reported there will be no disproportionate share payment. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(e) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a quarterly basis established in June of each year. The quarterly payment will be prospective based on the disproportionate share adjustment established on the most recent cost report multiplied by the actual number of Medicaid days of the prior year established on paid claims from June-May fiscal year plus expected improvement based on a historical basis for the upcoming fiscal year July-June.~~

~~(3) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio of 14% or one standard deviation above the mean utilization ratio for all hospitals, whichever is lower, will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%.~~

~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14% or one standard deviation above the mean, whichever is lower.~~

~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient reported Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~

~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~

~~Also, in order to receive this adjustment (c) the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the state Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer nonemergency obstetric services as of December 21, 1987.~~

~~(4) In accordance with the Medicaid State Plan, acute care hospitals that do not qualify under the criteria in (3) but have a low income inpatient utilization rate exceeding 25% will receive the following payment incentive:~~

~~(a) The prospective rate will be adjusted upward by 2% for each percentage above 25% up to a cap of 10%.~~

~~(b) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(c) Low income utilization rate will be calculated as follows from information obtained from the latest industry-complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~

~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and,~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for Medical assistance under an approved Medicaid State Plan) that is, reductions in charges given to other third-party payers, such as HMOs, Medicare or Blue Cross.~~

~~(d) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~

~~(5) Any hospital designated as a perinatal center by statute or regulation and with a service plan approved by the Department of Health Maternal and Child Health Section or any hospital providing without charge services to high-risk, multi-handicapped persons under age 21 who are enrolled in the Department's Children's Special Services program shall, because of the extraordinary risk and expertise involved in treatment of these individuals, be eligible to receive an adjustment not to exceed the uncompensated cost for perinatal services and services to handicapped children at each hospital for the state fiscal year. The total uncompensated care for each of the qualified providers will be divided by the total anticipated Medicaid days for the same period in order to determine the amount to be added to the disproportionate share adjustment calculated in paragraphs (3) and (4) above. This new adjustment will be multiplied by the total anticipated Medicaid days for the period. This adjustment will be added to and not subject to any limits that are included in paragraphs (3) and (4) above.~~

~~(6) Beginning July 1, 1991, any acute care hospital qualifying for a disproportionate share adjustment under the qualifying criteria listed in paragraphs (3) and (4) above and having at least 1,000 projected Medicaid days and having a Medicaid utilization ratio that exceeds the industry average utilization ratio which is computed by dividing the available hospital days by the Medicaid industry days will be eligible for an additional enhanced disproportionate share adjustment based on the following:~~

~~(a) The prospective rate will be adjusted upward by an amount equal to the difference of the hospital's Medicaid utilization ratio and the industry average utilization ratio multiplied by a factor of 9.45.~~

~~(b) The enhanced MDSA payment will be based on the enhanced disproportionate share adjustment calculated in subparagraph (a) above multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July through June.~~

~~(c) The sum of the MDSA payment calculated in (3), (4), and the enhanced payment computed in this paragraph (6) cannot exceed the aggregate sum of inpatient and outpatient charity care and bad debt charges and Medicaid and Medicare contractual adjustments converted to cost based on the latest industry-complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(7) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the~~

~~determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.~~

~~(8) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis and established in June of each year. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July-June. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~

~~(9) Effective October 1, 1992, hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or a Medicaid utilization ratio over 7.94% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of (a), (b), or (c), and the sum of (a), (b), or (c), whichever is higher, plus (f) cannot exceed 40% of inpatient and outpatient charity charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purposes of this rule Medicaid days will not include days reimbursed by the Primary Care Network. For the purposes of this rule charity, unless otherwise specified, will be defined as inpatient and outpatient charity charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. Charity will include charges for both in-state and out-of-state services.~~

~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 7.94% utilization rate.~~

~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~

~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~

~~(d) Low income utilization rate will be calculated as follows from information obtained from the latest industry-complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~

~~1. Total Medical inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan) that is reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~

~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~

~~(f) Any hospital whose charity exceeds 6% of the industry's total charity will receive an additional payment. This payment will be equal to their percentage of the industry's charity times a factor of 4.05 times the value of their charity.~~

~~(g) Any hospital that has a Medical utilization rate of 23% or greater and 23,000 Medicaid days or more will qualify for an additional MDSA payment. Hospitals qualifying will be allowed payment in excess of 40% of charity. Instead of a 40% limit these hospitals will receive up to a 75% limit. Any hospital qualifying for this enhancement whose ratio of charity to total revenues exceed 30% will be capped at a total MDSA payment of $42,750,000. Any hospital whose ratio is less than or equal to 30%, will be capped at $37,750,000.~~

~~(h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.~~

~~(i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~

~~(j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.~~

~~(10) Effective July 1, 1993, only those hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or having a Medicaid utilization ratio over 8.55% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of the amount determined by subparagraphs (a), (b), or (c), whichever is higher, and added to subparagraph (f). That total cannot exceed 40% of inpatient and outpatient "charity" charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purpose of this rule Medicaid days Will not include days reimbursed by the Primary Care Network. For the purpose of this rule "charity", unless otherwise specified, will be defined as inpatient and outpatient "charity" charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. "Charity" will include charges for both instate and out of state services.~~

~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 8.55% utilization rate.~~

~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~

~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~

~~(d) Low income Utilization rate will be calculated as follows from information obtained from the 1991 Hospital Joint Annual Report as submitted to the State Center of Health Statistics, The sum of:~~

~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from either the state and local governments in a cost reporting period, divided by the total amount of revenues of the hospitals for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to "charity care" (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to "charity care" shall not include contractual allowances and discounts (other than for indigent patient not eligible for Medical assistance under an approved Medicaid State Plan) that are reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~

(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.

(f) Any hospital whose "Charity" exceeds 6% of the industry's total "charity" will receive an additional payment. This payment will be equal to their percentage of the industry's "charity" times a factor of 3.0 times the value of their "charity".

(g) Any hospital that has Medicaid Utilization rate of 24% or greater and 25,000 Medicaid days or more will qualify for an additional MDSA payment. Qualifying hospitals will be allowed payment in excess of 40% "charity". Instead of a 40% limit these hospitals will receive up to a 91% limit. Any hospital qualifying for this enhancement whose ratio of "charity" to total revenues exceeds 30% will be capped at a total MDSA payment of $60,000,000. Any hospital whose ratio is less than or equal to 30%, will be capped at $50,000,000.

(h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.

(i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the number of Medicaid days reported on the 1992 cost report. In cases where the 1992 report is still unavailable, the latest report on file will be used.

(j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.

Authority: *T.C.A. §§71-5-105, 71-5-109, 12-4-301, and 4-5-202; Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (PL 102-234).* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed December 31, 1986; effective February 14, 1987. Amendment filed October 30, 1990; effective December 14, 1990. Amendment filed June 12,1991; effective July 27, 1991. Amendment filed September 18, 1991; effective November2,1991. Amendment filed January 20, 1993; effective March 6, 1993. Amendment filed October 22, 1993; effective January 5, 1994.*

1200-13-5-.12 OTHER ADJUS7MENTS TO THE PROSPECTIVE RATE.

(1) Adjustments to the prospective rate shall be made for the following reasons:

(a) a mathematical mistake in computing the rate;

(b) additional individual capital expenditures for which there is an approved certificate of need such as the purchase of major equipment or addition of new beds, which would have an impact of 5% on the facility's total prospective rate, or a $25,000 effect on Tennessee Medicaid reimbursement.

(c) a significant change in case mix resulting in a 5% change in the facility's total prospective rate, or a $25,000 effect on Tennessee Medicaid reimbursement. Case mix, for this purpose, is a diagnostic or therapeutic related factor requiring either an increase or decrease in the professional staff per patient ratio.

~~(2) Providers who are seeking a rate adjustment due to additional costs and who wish to have such an adjustment effective at the same time as the additional costs are actually incurred must submit request for such adjustment to the Medicaid agency at least 45 days prior to the time the additional costs will be incurred. The effective date of such rate adjustments shall be the first day of the month following 45 days from the date of receipt of the adjustment request.~~

~~Requests for adjustment must include detailed cost information identifying the appropriate operating and pass-through components.~~

~~***Authority:*** *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26, 1985.*~~

~~**1200-13-5-.13 NEW PROVIDERS, CHANGES IN OWNERSHIP, AND CHANGES IN FISCAL YEAR END.** New providers entering the Program will be required to submit a budgeted cost report from which an interim prospective rate will be set. Each new provider must submit, in accordance with rule 1200-13-5-.04 an actual cost report covering the first full year of actual operations, at which point a final prospective rate, with a retroactive adjustment, will be set. A change of ownership does not constitute a new provider. Any change in ownership or fiscal year end should be reported to the Office of the Comptroller of the Treasury and the Department.~~

~~***Authority:*** *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History.*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed April 30, 1987, effective June 14, 1987.*~~

~~**1200-13-5-.14 LOWER OF COST OR CHARGES LIMIT.** In the base year, the lower of cost or charges limitation will be waived for prospective rate determination purposes only. The limitation will, however, be applied for settlement purposes for all periods prior to a facility's first fiscal year under prospective payment. Carry forwards of unreimbursed costs will not be recognized once a provider's initial fiscal year under the prospective payment method has begun.~~

~~***Authority:*** *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985.*~~

~~**1200-13-5-.15 RATE NOTIFICATION AND EFFECTIVE DATES.**~~

~~(1) Beginning 30 days after the effective date of this regulation, each provider will be notified of their initial prospective rate at least 30 days prior to the beginning of their first fiscal year under prospective payment. For those providers whose first fiscal year under prospective payment begins earlier than 30 days after the effective date of this rule, every attempt will be made to provide for a reasonable notice to them. The initial prospective rate shall apply to services provided on or after the first day of the provider's first fiscal year subject to prospective payment. Payment for services rendered prior to the first day of the provider's first fiscal year subject to prospective payment and submitted for payment after such date shall be paid at the rate in effect during the period the service was rendered. Providers must split bill for services spanning their first prospective year and the prior year.~~

~~(2) Within 30 days after the receipt of each provider's cost report, each provider will be notified of their new prospective rate due to the normal pass-through adjustment. This rate shall be effective by the first day of the next month one month subsequent to the date of receipt of the provider's cost report. Providers must split bill for services spanning the effective date of the rate change.~~

~~(3) Within 30 days before the beginning of each fiscal year subsequent to the initial prospective year, each provider will be notified of their new prospective rate due to the normal operating rate adjustment. This rate shall apply to services provided on or after the beginning of the new fiscal year. Providers must split bill for services spanning the effective date of the rate change.~~

~~(4) Providers will be notified of special rate adjustment described in rule 1200-13-5-.12 no later than 45 days after the receipt of the appropriate data. Such rate change shall be effective as specified in~~

~~rule 1200-13-5-.12(2). Provider must split bill for services spanning the effective date of the rate change.~~

~~(5) Subsequent years' adjustments for high Medicaid volume, minimum occupancy, and resident and intern costs shall be completed at the same time and become effective at the same time as the pass-through adjustment described in rule 1200-13-5-.14(2).~~

~~(6) Delays in setting rates may be encountered if it becomes necessary to request additional information from a provider due to errors or omissions on cost reports. Cost reports are due as specified by Medicare regulations in effect on October 1, 1982.~~

~~(7) In cases of a change in ownership or fiscal year end, the operating component will be adjusted when the next trend is due under the old fiscal year end in order to avoid overlap or duplication of the period trended. This trend will be to the midpoint of the time between the old fiscal year end and the new fiscal year end and will be effective for dates of service beginning on the day after the old fiscal year end. The next trend will be from the midpoint of that period to the midpoint of the new fiscal year and will be effective for dates of service beginning on the first day of the new fiscal year. The rates should be computed at least 30 days prior to the effective date of the rate. Examples are found at subparagraphs (a) and (b) below.~~

~~(a) Assume that a provider has a former fiscal year end of June 30 and changes to a December 31 year end. The provider notifies us of the change before June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1983 to June 30, 1984, that midpoint being January 1, 1984. That rate was effective for services on or after July 1, 1983. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1984, to the midpoint of the time between the provider's former year end of June 30, 1984, and the new fiscal year end of December 31, 1984, that midpoint being October 1, 1984. The effective date of this rate will be for services on or after July 1, 1984. Next, we will trend from the point where we left off (October 1, 1984) to the midpoint of the provider's new fiscal year end of December 31, 1985, that midpoint being July 1, 1985, with a corresponding effective date of services on or after January 1, 1985. Normal annual indexing takes place thereafter.~~

~~(b) Notification made subsequent to Comptroller's indexing based on the former fiscal year end. Assume the same facts in the first example except that the provider notifies us of their fiscal year end change sometime after June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1984 to June 30, 1985, that midpoint being January 1, 1985. That rate was effective for services on or after July 1, 1984. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1985, to the midpoint of the time between the provider's former year end of June 30, 1985, and the new fiscal year end of December 31, 1985, that midpoint being October 1, 1985. The effective date of this rate will be for services on or after July 1, 1985. Next, we will trend from the point where we left off (October 1, 1985) to the midpoint of being July 1, 1986, with a corresponding effective date of service on or after January 1, 1985. Normal annual indexing takes place thereafter. This procedure will be followed to avoid overlapping of the periods trended even if the provider changed fiscal year end in 1984.~~

~~***Authority**: T.C.A. §§14-23-105,14-23-109 and 4-5-202. **Administrative History**. Original rule filed June 26, 1995, effective July 26, 1985. Amendment filed March 25, 1987, effective May 9, 1987.*~~

~~1200-13-5-.16 METHOD FOR PAYING PROVIDERS WHICH ARE EXEMPT FROM PROSPECTIVE SYSTEM.~~

~~(1) The Comptroller of the Treasury, will determine, in accordance with Medicare principles of cost reimbursement in effect on October 1, 1982, and described at 42 CFR 405, per diem reimbursable costs for those Medicaid providers of hospital services exempted from the prospective system set out in rules 1200-13-5-.06 through 1200-13-5-.15 inclusive, except those hospitals described in~~

~~item (3) of rule 1200-13-5-.07 which shall be reimbursed as described in that item. The maximum limit of such reimbursable costs shall be the lessor of: (a) the reasonable cost of covered services, or (b) the customary charges to the general public for such services. Provided, however, that such providers which are public hospitals rendering services free or at nominal charge shall not be subject to the lower of cost or charges limitation but shall be paid fair compensation for services in accord with provisions of 42 CFR 405 in effect on October 1, 1983. Covered services means covered services as defined by the Department. Each provider's per diem reimbursable cost will be based on the provider's cost report which is to be filled out and submitted in accordance with rule 1200-13-.5-04.~~

~~(2) *Interim Rate.* The Comptroller of the Treasury, will establish interim per diem reimbursable rates for providers exempted from the prospective payment system. The interim rate remains in effect until the provider's actual reimbursable cost based on the provider's cost report, is established. Interim rates shall be based on prior cost report data and shall be subject to revision upon further review, audit, and/or subsequent finding of the Comptroller of the Treasury. For new facilities, budgeted information supplied by the provider may be used to establish an interim rate.~~

~~(3) *Approval of Initial Settlement.* When a provider's cost report is received, it is reviewed and compared with:~~

~~(a) The amount of charges for covered services provided to Medicaid beneficiaries by the provider during the provider's fiscal period.~~

~~(b) The amount of interim payments paid by the Department to the provider for the provider's fiscal period.~~

~~(c) The number of inpatient days approved for the provider by the Department during the provider's fiscal period.~~

~~On the basis of the comparison and review, the Comptroller of the Treasury will make an initial determination of the cost settlement due to the provider or the state for the designated period. Approval of the initial settlement will be subject to further review, audit and/or subsequent finding of the Comptroller of the Treasury. On the basis of the initial settlement, the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(4) *Approval of Final Cost Settlement.* After the necessary final review and/or auditing has been performed by the Comptroller of the Treasury, the Comptroller will advise the Department of the final cost settlement approved. On the basis of the approved final settlement the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(5) *Inpatient Routine Operating Per Diem Cost Limitation.* In the event that data is not available to compute the inpatient routine operating per diem cost limitation for all or any part of a provider's fiscal year, the Comptroller of the Treasury will use each provider's per diem cost limitation in effect prior to the provider's first fiscal year subject to prospective payment which will be appropriately trended by the actual hospital market index as published by the Health Care Financing Administration in the Federal Register or by Data Resources, Inc., or their successors.~~

~~(6) *Out of State Reimbursement Rate.* Hospitals which meet the criteria as set forth in rule 1200-13-5-.07(2), shall be reimbursed at the lesser of:~~

~~(a) the reasonable cost of covered services,~~

~~(b) the customary charges to the general public for such services, or~~

~~(c) the Medicaid reimbursement rate as established by the hospital's respective state. Covered services are those defined by the Tennessee Department of Health. Reimbursement by Tennessee Medicaid shall be considered as payment in full for covered services and no additional billings shall be made to the patient for these services.~~

~~***Authority:*** *T.C.A.§§12-4-301, 71-5-105, 71-5-109 and 4-5-202.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed May 8, 1991; effective June 22, 1991*~~

~~**1200-13-5-.17 AUDIT.**~~

~~(1) All hospital cost reports are subject to audit at any time by the Comptroller of the Treasury and the Department or their designated representative. Cost report data must be based on and traceable to the provider's financial and statistical records and must be adequate, accurate, and in sufficient detail to support payment made for services rendered to beneficiaries. Retroactive adjustments to the prospective rate may be made for audit exceptions.~~

~~(2) Hospitals will be subject to medical audits at any time. Medical audits include, but are not limited to, "medical necessity" or "length of stay." Medical audit exceptions may result in a direct recoupment rather than a rate change.~~

~~(3) The Department will provide for all costs of auditing which may be required.~~

~~***Authority:*** *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26,1985.*~~

~~**1200-13-5-.18 TERMINATION OF MEDICAID HOSPITALIZATION PROGRAM.** For hospitalization services provided prior to January 1, 1994, the rules as set out at rule chapter 1200-13-5 shall apply. Effective January 1, 1994, the rules of TennCare as set out at rule chapter 1200-13-12 shall apply except that Tennessee Medicaid will continue to pay Medicare premiums, deductibles and copayments in accordance with the Medicaid rules in effect prior to January 1, 1994, and as may be amended.~~

~~***Authority:*** *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Public Chapter 358 of the Acts of 1993.* ***Administrative History:*** *Original rule filed March 18, 1994; effective June 1, 1994.*~~

Hospital Rate Variation Corridors

Table of Contents

1200-13-05-.01 Definitions
1200-13-05-.02 Implementation of Contract Amendments for Existing Contracts between Hospitals and MCOs
1200-13-05-.03 Implementation of New Contracts between Hospitals and MCOs Entered into After July 1, 2013
1200-13-05-.04 Exclusion of Any Hospital from TennCare Networks
1200-13-05-.05 Out-of-Network Reimbursement
1200-13-05-.06 Agreements between Hospitals and MCOs for Limited Services
1200-13-05-.07 Changes to Hospitals Rates Negotiated Between MCOs and Hospitals after September 30, 2015
1200-13-05-.08 Categorization of New Services Added after July 1, 2015

1200-13-05-.01 Definitions.

(1) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in these rules.

(2) Existing Contracts. The contracts that were in place between a Tennessee hospital and a TennCare MCO as of July 1, 2013.

(3) Hospital. A general or specialty acute care facility licensed as a hospital by the Tennessee Department of Health pursuant to T.C.A. § 68-11-206, excluding hospitals that are categorized as Rehabilitation, Research, Long Term Acute or Psychiatric on the 2013 Joint Annual Report of Hospitals.

(4) Inpatient Services. Routine, nonspecialized services that are provided at many or most hospitals in the state to patients admitted to the hospital as inpatients.

(5) MCO (Managed Care Organization). An appropriately licensed Health Maintenance Organization (HMO) contracted with the Bureau of TennCare to manage the delivery, provide for access, contain the cost, and ensure the quality of specified covered medical and behavioral benefits to TennCare enrollee-members through a network of qualified providers.

(6) Medicare. A hospital's fee-for-service reimbursement under Title XVIII including that hospital's adjustment for DSH, wage index, etc., and excluding only Indirect Medical Education (IME), pass through payments, and any Medicare payment adjustments for Sequestration, Value Based Purchasing, Readmissions and Hospital Acquired Conditions.

(7) Medicare Severity Diagnosis Related Groups (MS-DRG). The Medicare statistical system of classifying any inpatient stay into groups for the purpose of payment.

(8) New Contract. Any initial contract between an MCO and a hospital that did not exist on July 1, 2013. Contracts in place on July 1, 2013, that have been materially altered since July 1, 2013, are not new contracts.

(9) Outpatient Services. Services that are provided by a hospital to patients in the outpatient department of the hospital and patients receiving outpatient observation services.

(10) Rate Corridors. Upper and lower limits established by the state's actuary and approved by the Bureau, in consultation with the Tennessee Hospital Association (THA), for payments by MCOs to hospitals for services provided to TennCare enrollees. The Rate Corridors are based on a hospital's Medicare reimbursement that existed in FFY 2011 and used to determine the parameters of TennCare rates for contracts between Tennessee hospitals and TennCare MCOs after July 1, 2013. The determination of whether a hospital's TennCare rates are within the prescribed Rate Corridors shall be made on the basis of reimbursement from all TennCare MCOs with which the hospital has a contract. The Rate Corridors, which were calculated by the State's actuary as the budget neutral corridors, are as follows:

(a) For inpatient services, the minimum level is 53.8% and the maximum level is 80% of the hospital's Medicare for 2011.

(b) For outpatient services, the minimum level is 93.2% and the maximum level is 104% of the hospital's Medicare for 2011.

(c) For cardiac surgery, the minimum level is 32% and the maximum level is 83% of the hospital's Medicare for 2011.

(d) For specialized neonatal services the minimum is 4% and the maximum level is 174% of the hospital's Medicare for 2011.

(e) For other specialized services the minimum level is 49% and the maximum level is 164% of the hospital's Medicare for 2011.

(11) Specialized Services. Services that are typically provided in a small subset of hospitals, such as transplants, neonatal intensive care and level 1 trauma.

(12) TennCare. The TennCare waiver demonstration program(s) and/or Tennessee's traditional Medicaid program.

(13) TennCare Actuary. The actuarial firm selected by the Bureau to assist the Bureau in establishing the capitation rates for TennCare MCOs each year.

(14) Total TennCare Rates. Payment rates for each hospital in the aggregate from all MCOs with which the hospital has network contracts.

(15) Year 1 Corridors. The initial upper and lower limits established by the Bureau in consultation with THA based on a hospital's Medicare reimbursement that existed in FFY 2011 and that were used to implement rate variation limitations in contracts between Tennessee hospitals and TennCare MCOs from July 1, 2012 until July 1, 2013. The Year 1 Corridors are as follows:

(a) For inpatient services, the minimum level was 40% and the maximum level was 90% of the hospital's Medicare for 2011.

(b) For outpatient services, the minimum level was 90% and the maximum level was125% of the hospital's Medicare for 2011.

(c) For cardiac surgery, the minimum level was 30% and the maximum level was 80% of the hospital's Medicare for 2011.

(d) For specialized neonatal services the minimum was 4% and the maximum level was 180% of the hospital's Medicare for 2011.

(e) For other specialized services the minimum level was 30% and the maximum level was 160% of the hospital's Medicare for 2011.

1200-13-05-.02 Implementation of Contract Amendments for Existing Contracts between Hospitals and MCOs.

These contracts set rates for a period of two years effective July 1, 2013, and provided for rate amendments to be negotiated and implemented on July 1, 2015.

(1) For hospitals that had existing contracts with MCOs in place on July 1, 2013, and the MCO and hospital had negotiated contract amendments to bring rates for total TennCare into the Rate Corridors and the rates in the contracts have not been adjusted since July 1, 2013, the MCOs will reissue those amendments with a new effective date of July 1, 2015.

(2) In the case of a hospital that had contracts with MCOs in place on July 1, 2013, which contracts included amendments implementing rates within the Rate Corridors, and where the rates in the contracts have been adjusted since July 1, 2013, the Bureau shall evaluate the rates in the current contracts to determine if the total TennCare rates for the hospital are within the Rate Corridors. If the rate adjustments cause the total TennCare reimbursement for the hospital to be outside of the Rate Corridors, the affected MCOs shall implement contract amendments approved by the Bureau in consultation with the TennCare Actuary to bring the hospital rates into the Rate Corridors effective July 1, 2015.

(3) In the case of a hospital with contracts in existence on July 1, 2013, which contracts include rates outside of the Rate Corridors, the affected MCOs shall implement contract amendments to bring total TennCare rates into the Rate Corridors with an effective date of July 1, 2015. The Bureau shall verify that the new contract rates in conjunction with contracts between the hospital and all other MCOs bring the hospital's total TennCare rates within the Rate Corridors.

1200-13-05-.03 Implementation of New Contracts between Hospitals and MCOs Entered into after July 1, 2013.

These contracts have not yet been in effect for a period of time sufficient to negotiate rate amendments for a July 1, 2015, implementation date. In the case of a hospital that entered into a contract with an MCO

after July 1, 2013, including a hospital that entered into a contract with an MCO with rates within Year 1 Corridors effective January 1, 2015, the affected MCOs shall implement contract amendments that bring the hospital rates within the Rate Corridors no later than September 30, 2015.

1200-13-05-.04 Exclusion of Any Hospital from TennCare Networks.

A hospital that does not accept a contract amendment required by this Rule shall be excluded effective October 1, 2015, from participation in the TennCare MCO network to which the contract amendment applies.

1200-13-05-.05 Out-of-Network Reimbursement.

Out-of-Network payments to all hospitals shall be governed by TennCare Medicaid Rule 1200-13-13-.08(2)(a)-(c) and TennCare Standard Rule 1200-13-14-.08(2)(a)-(c).

1200-13-05-.06 Agreements between Hospitals and MCOs for Limited Services.

Rates for a single case agreement negotiated between the MCOs and hospitals that are not in network with the MCO to ensure access to services for TennCare enrollees may not exceed the ceiling or be below the floor of the Rate Corridors appropriate for those services.

1200-13-05.07 Changes to Hospital Rates Negotiated between MCOs and Hospitals after September 30, 2015.

To ensure that each hospital's total TennCare reimbursement remains within the Rate Corridors, proposed rate changes after September 30, 2015, shall be evaluated by the Bureau to determine if the proposed rate change will move the hospital's total TennCare rates outside of the Rate Corridors. If the evaluation indicates the change will put the hospital outside of the Rate Corridors, the Bureau shall provide the adjustments necessary to ensure that the contract is compliant with the limits of the Rate Corridors. TennCare rates between a hospital and an MCO may not be modified after September 30, 2015, without approval from the Bureau.

1200-13-05-.08 Categorization of New Services Added after July 1, 2015.

MS-DRG classifications serve as the basis for identifying services as inpatient or specialized. MS-DRG classifications may change and new MS-DRG classifications may be added from time to time. New or modified MS-DRG classifications shall be evaluated for assignment to appropriate inpatient or specialized categories by the Bureau in consultation with THA and the TennCare Actuary.

GW10115233redline

~~RULES~~
~~OF~~
~~TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT~~
~~DIVISION OF MEDICAID~~

~~CHAPTER 1200-13-5~~
~~HOSPITALIZATION PROGRAM~~

~~TABLE OF CONTENTS~~

~~1200-13-5-.01 Definitions~~
~~1200-13-5-.02 Determination of Reimbumable Coat~~
~~1200-13-5-.03 Approval of the Department Required for Participants Cost Report Required~~
~~1200-13-5-.04 Cost Report Required~~
~~1200-13-5-.05 Billing Procedure~~
~~1200-13-5-.06 Application of Prospective Payment Method~~
~~1200-13-5-.07 Providers Exempted from Prospective Payment System~~
~~1200-13-5-.08 Prospective Payment Methodology~~
~~1200-13-5-.09 Minimum Occupancy Adjustment~~
~~1200-13-5-.10 Resident and Intern Adjustment~~
~~1200-13-5-.11 High Medicaid Volume Incentive~~
~~1200-13-5-.12 Other Adjustment to the Prospective Rate~~
~~1200-13-5-.13 New Providers~~
~~1200-13-5-.14 Lower of Cost or Charges Limit~~
~~1200-13-5-.15 Rate Notification and Effective Date~~
~~1200-13-5-.16 Method for Paying Providers which are Exempt from Prospective System~~
~~1200-13-5-.17 Audit~~
~~1200-13-5-.18 Termination of Medicaid Hospitalization Program~~

~~**1200-13-5-.01 DEFINITIONS**. The following definitions shall apply to rules 1200-13-5-.02 through 1200-13-5-.*15* inclusive, unless otherwise indicated.~~

~~(1) *Capital Costs* means those costs which are required or allowed by Title XVIII principles to be included in all depreciation columns on line 72 of worksheet B of HCFA form 2552-81(11-81). Capital costs shall not include costs associated with non-reimbursable cost centers.~~

~~(2) *Medical Education Costs* means those costs associated with a nursing school or intern-resident services in an approved residency program which are required or allowed by Title XVIII principles to be included in columns 18 and 19 of line 72 on worksheet B of HCFA form 2552-8-1 (11-8-1). Medical education costs shall not include costs associated with non reimbursable cost centers, nor shall they include costs for routine in-service training.~~

~~(3) *Hospital Based Physician Costs* means physician costs applicable to Medicaid beneficiaries which are required or allowed by Title XVIII principles to be included on line 12 of Column 5f of Part 1 of worksheet D-3 of HCFA form 2552-81(11-81). Such costs shall not be allowable for services provided on or after October 1, 1983.~~

~~(4) *Utilization Ratio* means the ratio of inpatient days attributable to patients determined eligible for Medicaid by the State of Tennessee to total inpatient days.~~

~~(5) *Medicaid Day* means any part of a day including the day of admission in which a person determined eligible for Medicaid by the State of Tennessee is admitted as an inpatient with the intention of remaining overnight. The day of discharge is not counted as a day. If admission and discharge occur on the same day, the day is considered one inpatient day.~~

~~(6) *Approved Residency Program* means: (1) intern or resident in training teaching program approved by the Council on Medical Education of the American Medical Association, or in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association; or, (2) in the case of a hospital or osteopathic hospital with an intern or resident in training program in the field of dentistry, under a teaching program approved by the Council on Dental Education of the American Dental Association.~~

~~(7) *Operating Component* means those costs, applicable to inpatient services only, which are required or allowed by Title XVIII principles to be included on line 10 of Part 1 of schedule E-5 of HCFA form 2552-81 (11-81),~~

less the portion, - which is attributable to patients determined eligible for Medicaid by the State of Tennessee, - of depreciation, medical education costs, and hospital based physician costs, plus an allowance for the inpatient routine nursing salary differential which was repealed by Medicare on October 1, 1982.

(8) *Pass Through Component* means the share which is attributable to patients determined eligible for Medicaid by the State of Tennessee of actual capital costs and actual medical education costs. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass through component.

(9) *Title XV111 principles* means, except where indicated otherwise, those Medicare principles which are applicable to hospitals, which were in effect on October 1, 1982, and which are described at 42 CFR, 405.

(10) *Base Year Cost Report* means the cost report for the next to the last 12 month cost reporting period preceding the first cost reporting period subject to prospective payment.
EXAMPLE:

1st Year Subject to Prospective Payment	*Base Year*
1/1/84 to 12/31/84	1/1/82 to 12/31/82
7/1/84 to 6/30/85	7/1/82 to 6/30/83

If a hospital's cost reporting period ending on or after September 30, 1982 was for less than 12 months, the cost report for the most recent 12 month cost reporting period ending before September 30, 1982 will be used. The Commissioner of the Department of Health and Environment reserve the right to rebase the reimbursement system described in Chapter 12-13-5 of the Rules of the Department of Health and Environment at such time deemed necessary.

(11) *Department* means the Tennessee Department of Health and Environment.

Authority. *T. C.A. § §4-5-202, 12-4-301, 71-5-105 and 71-5-109,* Public *Chapter 913* of *the Acts* of 1992. ***Administrative History***. Original rule filed June 26,1985; effective July 26,1*985. Amendment filed January* 13,1987; *effective* February 27, *1987. Amendment* filed September 25, 1992; *effective November* 9, 1992.

1200-13-5-.02 DETERMINATION OF REIMBURSABLE COST. The Comptroller of the Treasury in accordance with the Department's rules and regulations shall make the determination of reimbursable per diem cost for hospitals.

Authority: *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History****: Original rule filed June 26,1985, effective July 26, 1985.*

1200-13-5-.03 APPROVAL OF THE DEPARTMENT REQUIRED FOR PARTICIPANTS. Only those institutions or distinct parts thereof certified by the Department in accordance with the General Rule 1200-13-1-.05(2) as rendering hospital care and contracting with Medicaid may participate and be reimbursed as providers under these provisions. The Department shall notify the Comptroller of the Treasury when a provider enters the program and when its participation terminates.

Authority*: T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History****: Original rule filed June 26,1985; effective July 26, 1985.*

1200-13-5-.04 COST REPORTS REQUIRED.

(1) In order to be eligible for payment by the Medicaid program for hospital services provided to Tennessee Medicaid beneficiaries, providers, including those paid by a prospective method, are required at each provider's Fiscal year end, upon termination of provider status, change in ownership, or enrollment as a new provider, as per rule 1200-13-5-.13, to submit to the Comptroller of the Treasury an annual cost report on forms designated by the Department. This report shall be submitted not later than three months from the end of each provider's fiscal year. Such cost reports must be completed in accordance

~~with the Medicare principles of cost reimbursement set out in the Medicare Provider Reimbursement Manual, in effect on October 1, 1982, except where the Department may specify otherwise by these rules. All covered services are to be in accordance with the Medicaid Program definition of covered services.~~

~~(2) Providers which fail to submit cost reports which comply with Title XVIII principles in effect on October 1, 1992 and described at 42 CFR 405 shall be subject to the sanctions specified in *T.C.A.* §71-5-130.~~

~~(3) To be eligible to receive payment, contracting hospitals shall use uniform hospital statistics and classification of accounts as published by the American Hospital Association for all accounting records, or any other acceptable accounting methods approved by the Department of Health in consultation with the Comptroller and the Tennessee Hospital Association. Any contracting hospital that does not adopt the uniform classification of accounts, or that does not submit certified statements when required by the Department of Health will be subject to the sanctions specified in *T.C.A. §71-5-130.*~~

~~(4) After a period of five years following the implementation of the TennCare Program on January 1, 1994, amended or corrected hospital cost reports with claims for reimbursement for services prior to January 1, 1994 shall not be accepted.~~

~~***Authority:*** *T.C.A. §§14-23-105, 14-23-109, 71-5-105, 71-5-109 and 4-5-202.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed January 30, 1989; effective March 16, 1989. Amendment filed April 14, 1989; effective May 8, 1989. Amendment filed October 14, 1998; effective December 28, 1998.*~~

~~**1200-13-5-.05 BILLING PROCEDURE.** Institutions or distinct parts thereof rendering hospital care shall bill the Department or other agency or organization designated by the Department on the forms and in the manner designated. No provider shall charge for Medicaid patients more than is charged for private paying patients for equivalent accommodations and services.~~

~~***Authority:*** *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26, 1985.*~~

~~**1200-13-5-.06 APPLICATION OF PROSPECTIVE PAYMENT METHOD.** With respect to cost reporting periods on or after the effective date of this rule, all Medicaid providers of hospital care, except those exempted by the provisions of rule 1200-13-5-.07 shall be paid for inpatient services by a prospective method as set out in rules 1200-13-5-.08 through 1200-13-5-.15 inclusive.~~

~~***Authority:*** *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26, 1985.*~~

~~**1200-13-5-.07 PROVIDERS EXEMPTED FROM PROSPECTIVE PAYMENT SYSTEM.** The prospective payment system shall not apply to:~~

~~(1) Long-term care facilities (hospitals which have an average length of stay of more than 25 days).~~

~~(2) Hospitals which elect not to submit a cost report which have less than $100,000 annually, based on the State of Tennessee's fiscal year, in total charges to patients determined eligible for Medicaid by the State of Tennessee; the annual total charges does not include charges associated with transplants covered by Tennessee Medicaid and are reimbursed in accordance with rule 1200-13-1-.06(18)(f)2.~~

~~Such providers shall be reimbursed an amount not to exceed 80% of reasonable charges for covered item billed by the provider. Reasonable charges are those which are charged by comparable providers for similar services. In the event that providers exceed $100,000 in total Tennessee Medicaid charges annually:~~

~~(a) In state hospitals or out of state hospitals in contiguous medical marketing areas, will be treated as new providers as specified in rule 1200-13-5-.13.~~

~~(b) All other hospitals will be reimbursed as specified in rule 1200-13-5-.16(6).~~

~~(3) Outpatient services~~

~~***Authority:*** *T.C.A. §§12-4-301, 14-23-105, 14-23-109, 71-5-105, 71-5-109, and 4-5-202.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed November 10, 1988; effective December 25, 1988. Amendment filed May 8, 1991; effective June 22, 1991.*~~

~~1200-13-5-.08 PROSPECTIVE PAYMENT METHODOLOGY.~~

~~(1) The prospective payment will be made as a rate per inpatient day. Each facility's reimbursable inpatient costs will be determined in accordance with Title XVIII principles, from a base year cost reporting period. Costs will be separated into an operating component and a pass-through component. A trending factor will be applied to the operating rate component only. The prospective rate will be the sum of the trended operating component and the untrended pass-through component, plus or minus adjustments for minimum occupancy, (effective October 1, 1989, Tennessee Medicaid will not impose a minimum occupancy penalty), resident and intern costs, Medicaid disproportionate share and other adjustments as provided in rule 1200-13-5-.12. Tennessee Medicaid costs will be determined by a computed utilization ratio from form HCFA-2552.~~

~~(a) Except for inpatient hospital days involving approved organ transplants, the first twenty (20) days per fiscal year will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only), and Medicaid disproportionate share adjustment (MDSA) components. For medically necessary days in excess of twenty (20) per fiscal year, reimbursement will be made at 60 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Approved inpatient days involving organ transplants will be reimbursed at 100 percent of the operating component plus 100 percent of the capital, direct and indirect education, return on equity (for proprietary providers only) and MDSA components. Admission and stays involving organ transplants that span fiscal years will be reimbursed as if the entire stay had occurred during the first fiscal year.~~

~~(2) Adjustments to Base Period Costs. It may be necessary to adjust base year cost reports to make the base period costs comparable to inpatient costs incurred in the prospective period, such as costs to be incurred by hospitals required to enter the Social Security system beginning January 1, 1984. Therefore, hospitals submitting form HCFA-1008 to their Medicare intermediary should send a copy of this form to the Comptroller of the Treasury. For hospitals which do not submit form HCFA-1008, appropriate adjustments will be made based on the best available information.~~

~~(3) Pass Through Component.~~

~~(a) Each facility's initial prospective rate will be based on the base year cost report and will include a pass-through component consisting of the portion of capital costs and medical education costs which is attributable to patients determined eligible for Medicaid by the State of Tennessee. The pass-through component may vary from year to year depending on each facility's actual capital costs and medical education costs and will not be computed until the facility's cost report is received. Upon the effective date of these rules, the Services Tax will be an allowable cost included in the pass through component.~~

~~(b) Additional capital costs due to revalued assets will be recognized only when an existing provider is purchased by another provider in a bona fide sale (arms length transaction). The new value for reimbursement purposes shall be the lesser of (1) the purchase price of the asset at the time of the sale, (2) the fair market value of the asset at the time of the sale (as determined by an MAI appraisal), (3) current reproduction cost of the asset depreciated on a straight line basis over its useful life to the time of the sale, or (4) for facilities undergoing a change of ownership on or after July 18, 1984, the acquisition cost to the first owner of record on or after July 18, 1994. The cost basis of depreciable assets in a sale not considered bona fide is additionally limited to (5) the seller's cost basis less accumulated depreciation. The~~

purchaser has the burden of proving that the transaction is a bona fide sale should the issue arise. Gains realized from the disposal of depreciable assets while a provider is participating in the program are to be a deduction from allowable capital costs.

(c) The payment of return on equity will be determined by Medicare principles of cost reimbursement, 42 CFR 405, in effect on August 1, 1983 providing that, effective April 20, 1983, return on equity shall be adjusted to reflect 100% of the average rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

EXAMPLE

Base Year:	12/31/82
Base Year Cost Report Received	05/01/83
Initial Prospective Rate Determined	06/01/83
Beginning of Prospective Payment	01/01/84
12/31/83 Cost Report Received	05/01/94
12/31/83 Cost Report Rate Adjustment Completed	06/01/84

In this example, the initial prospective rate continues until June 1, 1984. On June 1, 1984, the rate is adjusted (for service dates on or after June 1, 1984) for the Tennessee Medicaid share of the actual capital costs, medical education costs, hospital based physician costs, and return on equity (for proprietary providers only) reported on the December 31, 1983, cost report.

(d) Beginning with fiscal years beginning July 1, 1987, and later, capital costs will be reduced by 3.5% for dates of services July 1, 1987 through September 30, 1987, by 7% for dates of service October 1, 1987 through December 31, 1987, by 12% for dates of service January 1, 1988 through September 30, 1988, and by 15% for dates of service October 1, 1988 through September 30, 1989, by 0% for dates of service October 1, 1989 through December 31, 1989, and by 15 % for dates of service January 1, 1990 and later. Reduction will be figured into year end final settlements. Hospitals designated as Sole Community Hospitals are exempt from percentage reduction in capital costs. Upon the effective date of these rules, hospitals will be reimbursed 100% of their capital costs.

(4) Operating Component. Each facility's initial prospective rate shall include an operating component which is computed from the base year cost report. The operating component will be trended forward each year. Trending to the new rebased year, (1988 cost reports or if not available the prior cost report) will be computed by utilizing the indexing rate recommended by the Prospective Payment Assessment Commission, applied from the end of the hospital's fiscal year to October 1, 1989.

Thereafter the trending index shall be that rate of increase on prospective payments as recommended by the Prospective Payment Assessment Commission and as published in the *Tennessee Administrative Register*. The trending indexes above shall be applied from October 1, 1989, to the midpoint of the state's fiscal year, no earlier than December 31, 1990, and shall be effective the first of the state's fiscal year, no earlier than July 1, 1990. When necessary, indexes will be prorated to correspond to a provider's year end. Each provider will be notified of its new operating rate due to indexing within 30 days of the beginning of the state's fiscal year.

Authority: *T.C.A. §§4-5-202, 12-4-301, 71-5-105 and 71-5-109; Public Chapter 913 of the Acts of 1992.* ***Administrative History.*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed February 21, 1986; effective March 23, 1986. Amendment filed September 12, 1986, effective October 27, 1986. Amendment filed May 29, 1987, effective July 13, 1987. Amendment filed June 2, 1988, effective July 17, 1988. Amendment filed August 8, 1990, effective September 22, 1990. Amendment filed October 21, 1991; effective December 5,, 1991. Amendment filed September 25, 1992; effective November 9, 1992.*

1200-13-5-.09 MINIMUM OCCUPANCY ADJUSTMENT. Capital costs shall be adjusted each year, using the formula set out below, if a facility's occupancy rate, based on staffed beds during the year, is below a minimum level. If a hospital exceeds its minimum occupancy rate, the formula is not applied. The minimum level is as follows:

~~Hospitals over 100 beds - 70%~~
~~Hospitals with 100 beds or fewer - 60%~~

~~The adjustments will be computed as follows and will be made at the same time as the pass through adjustment as set out in rule 1200-13-5-.15.~~

$$\text{ACC} = \text{TCC} \times \frac{\text{TBD}}{\text{ABD (Y)}}$$

~~ACC = allowable capital costs~~
~~TCC = total capital costs~~
~~TBD = total bed days used during the period~~
~~ABD = total bed days available during the period~~
~~Y = .6 for hospitals with 100 beds or fewer~~
~~.7 for hospitals over 100 beds~~

~~All references to beds means staffed beds. Staffed beds mean those beds which are equipped and available for patient use. Any beds or hospital wing which is unavailable for patient use, such as being closed for reasons including but not limited to, painting, maintenance, or insufficient nursing staff will not be considered staffed beds. It shall be the responsibility of the provider to determine, at least monthly, its number of staffed beds. A schedule showing the number of staffed and unstaffed beds, along with the reasons for being unstaffed, must be submitted with the cost report. This schedule is subject to audit in accordance with rule 1200-13-5-.17. If no schedule of staffed beds is received, staffed beds will be the number of beds at the end of cost report period. Effective October 1, 1989 Tennessee Medicaid will not impose a minimum occupancy penalty.~~

~~***Authority**: T.C.A. §§4-5-202, 12-4-301,14-23-105,14-23-109,71-5-105, and 71-5-109. **Administrative History**: Original rule filed June 26, 1985; effective July 26,1985. Amendment filed August 8,1990; effective September 22, 1990.*~~

~~1200-13-5-.10 RESIDENT AND INTERN COST ADJUSTMENT.~~

~~(1) On the basis of the ratio of full time equivalent residents and interns to total beds, a resident and intern cost adjustment shall be granted to teaching facilities having an approved residency program. Such facilities will be given this adjustment independent of the Medicaid disproportionate share adjustment. The resident and intern cost adjustment shall not be subject to trending. The cost adjustment shall be calculated using the following formula but shall not exceed 10%, and will be made at the same time as the pass through adjustment.~~

$$\text{RI} = 1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1 \right]$$

~~(2) For purposes of this adjustment, hospitals are to report only full time equivalent interns and residents on form HCFA 1008, Part 1. For years when form 1008 is no longer in effect, hospitals must submit their number of full time equivalent interns and residents with their cost report. The number of full time equivalent interns and residents is the sum of: (a) interns and residents employed 35 hours or more per week, and (b) one half of the total number of interns and residents working less that 35 hours per week regardless of the number of hours worked.~~

~~***EXAMPLE** - assuming no high Medicaid volume incentive or minimum occupancy adjustment.*~~

		~~**Year 1**~~	~~**Year 2**~~	~~**Year 3**~~
~~1.~~	~~Operating Component Prior to Trending~~	~~$250.00~~	~~$277.50~~	~~$299.70~~
~~2.~~	~~Pass Through Component~~	~~25.00~~	~~30.00~~	~~35.00~~
~~3.~~	~~Basis for RI adjustment~~	~~275.00~~	~~307.50~~	~~334.70~~
~~4.~~	~~RI Adjustment at 8% (line 3 x .08)~~	~~22.00~~	~~24.60~~	~~26.78~~
~~5.~~	~~Trend Factor for Operating Component~~	~~11%~~	~~8%~~	~~7%~~
~~6.~~	~~Trended Operating Component (line 1 x *line 5* + 100%)~~	~~277.50~~	~~299.70~~	~~320.69~~

~~7.~~	~~Prospective Rate (line 2 + line 4 +line 6)~~	~~$324.50~~	~~$354.30~~	~~$382.46~~

~~***Authority***. *T.C.A. §§4-5-202, 14-23-10,5, 14-23-109, 71-5-105 and 71-5-109.* ***Administrative History****. Original rule filed June 26, 1985, effective July 26, 1985. Amendment filed April 29, 1986; effective May 29, 1986. Amendment filed December 30, 1986, effective February 13,1987. Amendment filed December 8,1989; effective January 22, 1990.*~~

~~1200-13-5-.11 MEDICAID DISPROPORTIONATE SHARE AJUSTMENT (MDSA).~~

~~(1) In accordance with the Medicaid State Plan, hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio over 8% will be provided a payment incentive. The Medicaid disproportionate share adjustment shall not be subject to trending and shall be based on cost reports with fiscal year ending 6/30/86 and later. The incentive will be the higher of (a) or (b) but shall not exceed 17% and (a) + (c) or (b) + (c) shall not exceed 22%:~~

~~(a) The prospective rate will be adjusted upward by 3% for each 1% increment in the utilization rate above 8%.~~

~~(b) The prospective rate will be adjusted upward by 3% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000.~~

~~(c) The prospective rate will be adjusted upward by 5 % if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non-Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this incentive.~~

~~Also, in order to receive incentive (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(2) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid, or a utilization ratio over 14% will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%.~~

~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14%;~~

~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~

~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non-Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~

~~Also, in order to receive adjustment (c), the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. If no inpatient charity care is reported there will be no disproportionate share payment. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(c) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a quarterly basis established in June of each year. The quarterly payment will be prospective based on the disproportionate share adjustment established on the most recent cost report multiplied by the actual number of Medicaid days of the prior year established on paid claims from June-May fiscal year plus expected improvement based on a historical basis for the upcoming fiscal year July-June.~~

~~(3) In accordance with the Medicaid State Plan, acute care hospitals having over 3,000 patient days attributable to patients determined eligible for Medicaid by the state of Tennessee or a utilization ratio of 14% or one standard deviation above the mean utilization ratio for all hospitals, whichever is lower, will be provided a payment incentive. The MDSA shall not be subject to trending. The MDSA will be the higher of (a) or (b) but shall not exceed 34% and (a) + (c) or (b) + (c) shall not exceed 44%.~~

~~(a) The prospective rate will be adjusted upward by 6% for each 1% increment in the utilization rate above 14% or one standard deviation above the mean, whichever is lower.~~

~~(b) The prospective rate will be adjusted upward by 6% for each increment of 1,000 reimbursed inpatient reported Medicaid days over 3,000 and the prospective rate will be increased upward by 3% if total days exceed 3,650 but less than 4,000.~~

~~(c) The prospective rate will be adjusted upward by 10% if outpatient services and outpatient pharmacy services are provided to Medicaid and/or non Medicaid recipients who receive indigent services from the hospital. The hospital must qualify under (a) or (b) in order to receive this adjustment.~~

~~Also, in order to receive this adjustment (c) the provider must be able to document that the services rendered qualify as free client care, under generally accepted accounting principles which are applicable to hospitals, and this does not include bad debt.~~

~~(d) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the state Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer nonemergency obstetric services as of December 21, 1987.~~

~~(4) In accordance with the Medicaid State Plan, acute care hospitals that do not qualify under the criteria in (3) but have a low income inpatient utilization rate exceeding 25% will receive the following payment incentive:~~

~~(a) The prospective rate will be adjusted upward by 2% for each percentage above 25% up to a cap of 10%.~~

~~(b) No total payment of the disproportionate share adjustment will exceed 80% inpatient charity care plus 80% of inpatient bad debt. All inpatient charity care and inpatient bad debt will be determined by the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(c) Low income utilization rate will be calculated as follows from information obtained from the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~

~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and,~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for Medical assistance under an approved Medicaid State Plan) that is, reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~

~~(d) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominately individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~

~~(5) Any hospital designated as a perinatal center by statute or regulation and with a service plan approved by the Department of Health Maternal and Child Health Section or any hospital providing without charge services to high risk, multi handicapped persons under age 21 who are enrolled in the Department's Children's Special Services program shall, because of the extraordinary risk and expertise involved in treatment of these individuals, be eligible to receive an adjustment not to exceed the uncompensated cost for perinatal services and services to handicapped children at each hospital for the state fiscal year. The total uncompensated care for each of the qualified providers will be divided by the total anticipated Medicaid days for the same period in order to determine the amount to be added to the disproportionate share adjustment calculated in paragraphs (3) and (4) above. This new adjustment will be multiplied by the total anticipated Medicaid days for the period. This adjustment will be added to and not subject to any limits that are included in paragraphs (3) and (4) above.~~

~~(6) Beginning July 1, 1991, any acute care hospital qualifying for a disproportionate share adjustment under the qualifying criteria listed in paragraphs (3) and (4) above and having at least 1,000 projected Medicaid days and having a Medicaid utilization ratio that exceeds the industry average utilization ratio which is computed by dividing the available hospital days by the Medicaid industry days will be eligible for an additional enhanced disproportionate share adjustment based on the following:~~

~~(a) The prospective rate will be adjusted upward by an amount equal to the difference of the hospital's Medicaid utilization ratio and the industry average utilization ratio multiplied by a factor of 9.45.~~

~~(b) The enhanced MDSA payment will be based on the enhanced disproportionate share adjustment calculated in subparagraph (a) above multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July through June.~~

~~(c) The sum of the MDSA payment calculated in (3), (4), and the enhanced payment computed in this paragraph (6) cannot exceed the aggregate sum of inpatient and outpatient charity care and bad debt charges and Medicaid and Medicare contractual adjustments converted to cost based on the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics.~~

~~(7) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the~~

~~determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.~~

~~(8) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis and established in June of each year. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days for the upcoming fiscal year July-June. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~

~~(9) Effective October 1, 1992, hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or a Medicaid utilization ratio over 7.94% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of (a), (b), or (c), and the sum of (a), (b), or (c), whichever is higher, plus (f) cannot exceed 40% of inpatient and outpatient charity charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purposes of this rule Medicaid days will not include days reimbursed by the Primary Care Network. For the purposes of this rule charity, unless otherwise specified, will be defined as inpatient and outpatient charity charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. Charity will include charges for both in-state and out-of-state services.~~

~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 7.94% utilization rate.~~

~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~

~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~

~~(d) Low income utilization rate will be calculated as follows from information obtained from the latest industry complete Hospital Joint Annual Report as submitted to the State Center of Health Statistics. The sum of:~~

~~1. Total Medical inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues of the hospital for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan) that is reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~

~~(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.~~

~~(f) Any hospital whose charity exceeds 6% of the industry's total charity will receive an additional payment. This payment will be equal to their percentage of the industry's charity times a factor of 4.05 times the value of their charity.~~

~~(g) Any hospital that has a Medical utilization rate of 23% or greater and 23,000 Medicaid days or more will qualify for an additional MDSA payment. Hospitals qualifying will be allowed payment in excess of 40% of charity. Instead of a 40% limit these hospitals will receive up to a 75% limit. Any hospital qualifying for this enhancement whose ratio of charity to total revenues exceed 30% will be capped at a total MDSA payment of $42,750,000. Any hospital whose ratio is less than or equal to 30%, will be capped at $37,750,000.~~

~~(h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.~~

~~(i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the anticipated number of Medicaid days. This will be estimated based on projections from historical experience and the addition of any expected improvements.~~

~~(j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.~~

~~(10) Effective July 1, 1993, only those hospitals having over 1,000 cost report patient days attributable to patients determined eligible for Medicaid by the State of Tennessee or having a Medicaid utilization ratio over 8.55% or having a low income utilization rate equal to or greater than 25% will be provided a payment incentive (MDSA). The MDSA will be the higher of the amount determined by subparagraphs (a), (b), or (c), whichever is higher, and added to subparagraph (f). That total cannot exceed 40% of inpatient and outpatient "charity" charges plus Medicare and Medicaid contractual adjustments adjusted to cost. For the purpose of this rule Medicaid days Will not include days reimbursed by the Primary Care Network. For the purpose of this rule "charity", unless otherwise specified, will be defined as inpatient and outpatient "charity" charges (including medically indigent, low income, and medically indigent other), bad debt, and Medicare and Medicaid contractual adjustments adjusted to cost. "Charity" will include charges for both instate and out of state services.~~

~~(a) The prospective rate will be adjusted upward by a factor of 27.169 times the difference between the actual utilization rate and a 8.55% utilization rate.~~

~~(b) The prospective rate will be adjusted upward by 27.169% times the number of days above 1,000 days divided by 1,000 days.~~

~~(c) The prospective rate will be adjusted upward by 2% times the difference between the low income utilization rate and a 25% low income utilization rate. This adjustment will be capped at 10%.~~

~~(d) Low income Utilization rate will be calculated as follows from information obtained from the 1991 Hospital Joint Annual Report as submitted to the State Center of Health Statistics, The sum of:~~

~~1. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from either the state and local governments in a cost reporting period, divided by the total amount of revenues of the hospitals for inpatient services (including the amount of such cash subsidies) in the same cost reporting period; and~~

~~2. The total amount of the hospital's charges for inpatient hospital services attributable to "charity care" (care provided to individuals who have no source of payment, third party or personal resources) in a cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to "charity care" shall not include contractual allowances and discounts (other than for indigent patient not eligible for Medical assistance under an approved Medicaid State Plan) that are reductions in charges given to other third party payers, such as HMOs, Medicare or Blue Cross.~~

(e) In accordance with Section 4112 of Public Law 100-203, no disproportionate share payment will be made to hospitals that do not have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under the State Medicaid Plan. The only exception will be made to hospitals which provide services to inpatients that are predominantly individuals under 18 years of age or who did not offer non-emergency obstetric services as of December 21, 1987.

(f) Any hospital whose "Charity" exceeds 6% of the industry's total "charity" will receive an additional payment. This payment will be equal to their percentage of the industry's "charity" times a factor of 3.0 times the value of their "charity".

(g) Any hospital that has Medicaid Utilization rate of 24% or greater and 25,000 Medicaid days or more will qualify for an additional MDSA payment. Qualifying hospitals will be allowed payment in excess of 40% "charity". Instead of a 40% limit these hospitals will receive up to a 91% limit. Any hospital qualifying for this enhancement whose ratio of "charity" to total revenues exceeds 30% will be capped at a total MDSA payment of $60,000,000. Any hospital whose ratio is less than or equal to 30%, will be capped at $50,000,000.

(h) Each year a redetermination of the MDSA will be made at the same time the new pass through component is determined. This determination will be made on the basis of the best information available. Once the determination is made, it will not be changed until the next scheduled redetermination. The effective date will coincide with the new pass through adjustment.

(i) In accordance with the Medicaid State Plan, the disproportionate share adjustment will be paid on a monthly basis. The monthly payment will be prospective based on the disproportionate share adjustment multiplied by the number of Medicaid days reported on the 1992 cost report. In cases where the 1992 report is still unavailable, the latest report on file will be used.

(j) The total amount of MDSA payments will be limited by a federal cap. When allocating the amount of payments that will be made, the amount of payments made based on subparagraph (g) of these regulations, will be excluded. After calculations have been made, hospitals will receive their proportionate share of the total available MDSA allotment. The Medicaid Disproportionate Share Adjustment reimbursement for psychiatric hospitals will be included when determining the allocation.

Authority: *T.C.A. §§71-5-105, 71-5-109, 12-4-301, and 4-5-202; Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (PL 102-234).* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed December 31, 1986; effective February 14, 1987. Amendment filed October 30, 1990; effective December 14, 1990. Amendment filed June 12,1991; effective July 27, 1991. Amendment filed September 18, 1991; effective November2,1991. Amendment filed January 20, 1993; effective March 6, 1993. Amendment filed October 22, 1993; effective January 5, 1994.*

1200-13-5-.12 OTHER ADJUS7MENTS TO THE PROSPECTIVE RATE.

(1) Adjustments to the prospective rate shall be made for the following reasons:

(a) a mathematical mistake in computing the rate;

(b) additional individual capital expenditures for which there is an approved certificate of need such as the purchase of major equipment or addition of new beds, which would have an impact of 5% on the facility's total prospective rate, or a $25,000 effect on Tennessee Medicaid reimbursement.

(c) a significant change in case mix resulting in a 5% change in the facility's total prospective rate, or a $25,000 effect on Tennessee Medicaid reimbursement. Case mix, for this purpose, is a diagnostic or therapeutic related factor requiring either an increase or decrease in the professional staff per patient ratio.

(2) Providers who are seeking a rate adjustment due to additional costs and who wish to have such an adjustment effective at the same time as the additional costs are actually incurred must submit request for such adjustment to the Medicaid agency at least 45 days prior to the time the additional costs will be incurred. The effective date of such rate adjustments shall be the first day of the month following 45 days from the date of receipt of the adjustment request.

Requests for adjustment must include detailed cost information identifying the appropriate operating and pass-through components.

Authority: *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26, 1985.*

1200-13-5-.13 NEW PROVIDERS, CHANGES IN OWNERSHIP, AND CHANGES IN FISCAL YEAR END. New providers entering the Program will be required to submit a budgeted cost report from which an interim prospective rate will be set. Each new provider must submit, in accordance with rule 1200-13-5-.04 an actual cost report covering the first full year of actual operations, at which point a final prospective rate, with a retroactive adjustment, will be set. A change of ownership does not constitute a new provider. Any change in ownership or fiscal year end should be reported to the Office of the Comptroller of the Treasury and the Department.

Authority: *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History.*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed April 30, 1987, effective June 14, 1987.*

1200-13-5-.14 LOWER OF COST OR CHARGES LIMIT. In the base year, the lower of cost or charges limitation will be waived for prospective rate determination purposes only. The limitation will, however, be applied for settlement purposes for all periods prior to a facility's first fiscal year under prospective payment. Carry forwards of unreimbursed costs will not be recognized once a provider's initial fiscal year under the prospective payment method has begun.

Authority: *T. C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985.*

1200-13-5-.15 RATE NOTIFICATION AND EFFECTIVE DATES.

(1) Beginning 30 days after the effective date of this regulation, each provider will be notified of their initial prospective rate at least 30 days prior to the beginning of their first fiscal year under prospective payment. For those providers whose first fiscal year under prospective payment begins earlier than 30 days after the effective date of this rule, every attempt will be made to provide for a reasonable notice to them. The initial prospective rate shall apply to services provided on or after the first day of the provider's first fiscal year subject to prospective payment. Payment for services rendered prior to the first day of the provider's first fiscal year subject to prospective payment and submitted for payment after such date shall be paid at the rate in effect during the period the service was rendered. Providers must split bill for services spanning their first prospective year and the prior year.

(2) Within 30 days after the receipt of each provider's cost report, each provider will be notified of their new prospective rate due to the normal pass-through adjustment. This rate shall be effective by the first day of the next month one month subsequent to the date of receipt of the provider's cost report. Providers must split bill for services spanning the effective date of the rate change.

(3) Within 30 days before the beginning of each fiscal year subsequent to the initial prospective year, each provider will be notified of their new prospective rate due to the normal operating rate adjustment. This rate shall apply to services provided on or after the beginning of the new fiscal year. Providers must split bill for services spanning the effective date of the rate change.

(4) Providers will be notified of special rate adjustment described in rule 1200-13-5-.12 no later than 45 days after the receipt of the appropriate data. Such rate change shall be effective as specified in

~~rule 1200-13-5-.12(2). Provider must split bill for services spanning the effective date of the rate change.~~

~~(5) Subsequent years' adjustments for high Medicaid volume, minimum occupancy, and resident and intern costs shall be completed at the same time and become effective at the same time as the pass-through adjustment described in rule 1200-13-5-.14(2).~~

~~(6) Delays in setting rates may be encountered if it becomes necessary to request additional information from a provider due to errors or omissions on cost reports. Cost reports are due as specified by Medicare regulations in effect on October 1, 1982.~~

~~(7) In cases of a change in ownership or fiscal year end, the operating component will be adjusted when the next trend is due under the old fiscal year end in order to avoid overlap or duplication of the period trended. This trend will be to the midpoint of the time between the old fiscal year end and the new fiscal year end and will be effective for dates of service beginning on the day after the old fiscal year end. The next trend will be from the midpoint of that period to the midpoint of the new fiscal year and will be effective for dates of service beginning on the first day of the new fiscal year. The rates should be computed at least 30 days prior to the effective date of the rate. Examples are found at subparagraphs (a) and (b) below.~~

~~(a) Assume that a provider has a former fiscal year end of June 30 and changes to a December 31 year end. The provider notifies us of the change before June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1983 to June 30, 1984, that midpoint being January 1, 1984. That rate was effective for services on or after July 1, 1983. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1984, to the midpoint of the time between the provider's former year end of June 30, 1984, and the new fiscal year end of December 31, 1984, that midpoint being October 1, 1984. The effective date of this rate will be for services on or after July 1, 1984. Next, we will trend from the point where we left off (October 1, 1984) to the midpoint of the provider's new fiscal year end of December 31, 1985, that midpoint being July 1, 1985, with a corresponding effective date of services on or after January 1, 1985. Normal annual indexing takes place thereafter.~~

~~(b) Notification made subsequent to Comptroller's indexing based on the former fiscal year end. Assume the same facts in the first example except that the provider notifies us of their fiscal year end change sometime after June 1, 1984. The provider's rate has already been indexed to the midpoint of the year July 1, 1984 to June 30, 1985, that midpoint being January 1, 1985. That rate was effective for services on or after July 1, 1984. Next, we will index from the midpoint of the former fiscal year, that midpoint being January 1, 1985, to the midpoint of the time between the provider's former year end of June 30, 1985, and the new fiscal year end of December 31, 1985, that midpoint being October 1, 1985. The effective date of this rate will be for services on or after July 1, 1985. Next, we will trend from the point where we left off (October 1, 1985) to the midpoint of being July 1, 1986, with a corresponding effective date of service on or after January 1, 1985. Normal annual indexing takes place thereafter. This procedure will be followed to avoid overlapping of the periods trended even if the provider changed fiscal year end in 1984.~~

~~***Authority**: T.C.A. §§14-23-105,14-23-109 and 4-5-202. **Administrative History**. Original rule filed June 26, 1995, effective July 26, 1985. Amendment filed March 25, 1987, effective May 9, 1987.*~~

~~1200-13-5-.16 METHOD FOR PAYING PROVIDERS WHICH ARE EXEMPT FROM PROSPECTIVE SYSTEM.~~

~~(1) The Comptroller of the Treasury, will determine, in accordance with Medicare principles of cost reimbursement in effect on October 1, 1982, and described at 42 CFR 405, per diem reimbursable costs for those Medicaid providers of hospital services exempted from the prospective system set out in rules 1200-13-5-.06 through 1200-13-5-.15 inclusive, except those hospitals described in~~

~~item (3) of rule 1200-13-5-.07 which shall be reimbursed as described in that item. The maximum limit of such reimbursable costs shall be the lessor of: (a) the reasonable cost of covered services, or (b) the customary charges to the general public for such services. Provided, however, that such providers which are public hospitals rendering services free or at nominal charge shall not be subject to the lower of cost or charges limitation but shall be paid fair compensation for services in accord with provisions of 42 CFR 405 in effect on October 1, 1983. Covered services means covered services as defined by the Department. Each provider's per diem reimbursable cost will be based on the provider's cost report which is to be filled out and submitted in accordance with rule 1200-13-.5-04.~~

~~(2) *Interim Rate.* The Comptroller of the Treasury, will establish interim per diem reimbursable rates for providers exempted from the prospective payment system. The interim rate remains in effect until the provider's actual reimbursable cost based on the provider's cost report, is established. Interim rates shall be based on prior cost report data and shall be subject to revision upon further review, audit, and/or subsequent finding of the Comptroller of the Treasury. For new facilities, budgeted information supplied by the provider may be used to establish an interim rate.~~

~~(3) *Approval of Initial Settlement.* When a provider's cost report is received, it is reviewed and compared with:~~

~~(a) The amount of charges for covered services provided to Medicaid beneficiaries by the provider during the provider's fiscal period.~~

~~(b) The amount of interim payments paid by the Department to the provider for the provider's fiscal period.~~

~~(c) The number of inpatient days approved for the provider by the Department during the provider's fiscal period.~~

~~On the basis of the comparison and review, the Comptroller of the Treasury will make an initial determination of the cost settlement due to the provider or the state for the designated period. Approval of the initial settlement will be subject to further review, audit and/or subsequent finding of the Comptroller of the Treasury. On the basis of the initial settlement, the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(4) *Approval of Final Cost Settlement.* After the necessary final review and/or auditing has been performed by the Comptroller of the Treasury, the Comptroller will advise the Department of the final cost settlement approved. On the basis of the approved final settlement the Department or the fiscal agent will (as may be required) either make arrangements for an additional payment to the provider for services provided during the fiscal year or submit a claim to the provider requesting payment to the Department for the amount of overpayment made to the provider during the fiscal year.~~

~~(5) *Inpatient Routine Operating Per Diem Cost Limitation.* In the event that data is not available to compute the inpatient routine operating per diem cost limitation for all or any part of a provider's fiscal year, the Comptroller of the Treasury will use each provider's per diem cost limitation in effect prior to the provider's first fiscal year subject to prospective payment which will be appropriately trended by the actual hospital market index as published by the Health Care Financing Administration in the Federal Register or by Data Resources, Inc., or their successors.~~

~~(6) *Out of State Reimbursement Rate.* Hospitals which meet the criteria as set forth in rule 1200-13-5-.07(2), shall be reimbursed at the lesser of:~~

~~(a) the reasonable cost of covered services,~~

~~(b) the customary charges to the general public for such services, or~~

~~(c) the Medicaid reimbursement rate as established by the hospital's respective state. Covered services are those defined by the Tennessee Department of Health. Reimbursement by Tennessee Medicaid shall be considered as payment in full for covered services and no additional billings shall be made to the patient for these services.~~

~~***Authority:*** *T.C.A.§§12-4-301, 71-5-105, 71-5-109 and 4-5-202.* ***Administrative History:*** *Original rule filed June 26, 1985; effective July 26, 1985. Amendment filed May 8, 1991; effective June 22, 1991*~~

~~**1200-13-5-.17 AUDIT.**~~

~~(1) All hospital cost reports are subject to audit at any time by the Comptroller of the Treasury and the Department or their designated representative. Cost report data must be based on and traceable to the provider's financial and statistical records and must be adequate, accurate, and in sufficient detail to support payment made for services rendered to beneficiaries. Retroactive adjustments to the prospective rate may be made for audit exceptions.~~

~~(2) Hospitals will be subject to medical audits at any time. Medical audits include, but are not limited to, "medical necessity" or "length of stay." Medical audit exceptions may result in a direct recoupment rather than a rate change.~~

~~(3) The Department will provide for all costs of auditing which may be required.~~

~~***Authority:*** *T.C.A. §§14-23-105 and 14-23-109.* ***Administrative History:*** *Original rule filed June 26,1985; effective July 26,1985.*~~

~~**1200-13-5-.18 TERMINATION OF MEDICAID HOSPITALIZATION PROGRAM.** For hospitalization services provided prior to January 1, 1994, the rules as set out at rule chapter 1200-13-5 shall apply. Effective January 1, 1994, the rules of TennCare as set out at rule chapter 1200-13-12 shall apply except that Tennessee Medicaid will continue to pay Medicare premiums, deductibles and copayments in accordance with the Medicaid rules in effect prior to January 1, 1994, and as may be amended.~~

~~***Authority:*** *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Public Chapter 358 of the Acts of 1993.* ***Administrative History:*** *Original rule filed March 18, 1994; effective June 1, 1994.*~~

Hospital Rate Variation Corridors

Table of Contents

1200-13-05-.01 Definitions
1200-13-05-.02 Implementation of Contract Amendments for Existing Contracts between Hospitals and MCOs
1200-13-05-.03 Implementation of New Contracts between Hospitals and MCOs Entered into After July 1, 2013
1200-13-05-.04 Exclusion of Any Hospital from TennCare Networks
1200-13-05-.05 Out-of-Network Reimbursement
1200-13-05-.06 Agreements between Hospitals and MCOs for Limited Services
1200-13-05-.07 Changes to Hospitals Rates Negotiated Between MCOs and Hospitals after September 30, 2015
1200-13-05-.08 Categorization of New Services Added after July 1, 2015

1200-13-05-.01 Definitions.

(1) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in these rules.

(2) Existing Contracts. The contracts that were in place between a Tennessee hospital and a TennCare MCO as of July 1, 2013.

(3) Hospital. A general or specialty acute care facility licensed as a hospital by the Tennessee Department of Health pursuant to T.C.A. § 68-11-206, excluding hospitals that are categorized as Rehabilitation, Research, Long Term Acute or Psychiatric on the 2013 Joint Annual Report of Hospitals.

(4) Inpatient Services. Routine, nonspecialized services that are provided at many or most hospitals in the state to patients admitted to the hospital as inpatients.

(5) MCO (Managed Care Organization). An appropriately licensed Health Maintenance Organization (HMO) contracted with the Bureau of TennCare to manage the delivery, provide for access, contain the cost, and ensure the quality of specified covered medical and behavioral benefits to TennCare enrollee-members through a network of qualified providers.

(6) Medicare. A hospital's fee-for-service reimbursement under Title XVIII including that hospital's adjustment for DSH, wage index, etc., and excluding only Indirect Medical Education (IME), pass through payments, and any Medicare payment adjustments for Sequestration, Value Based Purchasing, Readmissions and Hospital Acquired Conditions.

(7) Medicare Severity Diagnosis Related Groups (MS-DRG). The Medicare statistical system of classifying any inpatient stay into groups for the purpose of payment.

(8) New Contract. Any initial contract between an MCO and a hospital that did not exist on July 1, 2013. Contracts in place on July 1, 2013, that have been materially altered since July 1, 2013, are not new contracts.

(9) Outpatient Services. Services that are provided by a hospital to patients in the outpatient department of the hospital and patients receiving outpatient observation services.

(10) Rate Corridors. Upper and lower limits established by the state's actuary and approved by the Bureau, in consultation with the Tennessee Hospital Association (THA), for payments by MCOs to hospitals for services provided to TennCare enrollees. The Rate Corridors are based on a hospital's Medicare reimbursement that existed in FFY 2011 and used to determine the parameters of TennCare rates for contracts between Tennessee hospitals and TennCare MCOs after July 1, 2013. The determination of whether a hospital's TennCare rates are within the prescribed Rate Corridors shall be made on the basis of reimbursement from all TennCare MCOs with which the hospital has a contract. The Rate Corridors, which were calculated by the State's actuary as the budget neutral corridors, are as follows:

(a) For inpatient services, the minimum level is 53.8% and the maximum level is 80% of the hospital's Medicare for 2011.

(b) For outpatient services, the minimum level is 93.2% and the maximum level is 104% of the hospital's Medicare for 2011.

(c) For cardiac surgery, the minimum level is 32% and the maximum level is 83% of the hospital's Medicare for 2011.

(d) For specialized neonatal services the minimum is 4% and the maximum level is 174% of the hospital's Medicare for 2011.

(e) For other specialized services the minimum level is 49% and the maximum level is 164% of the hospital's Medicare for 2011.

(11) Specialized Services. Services that are typically provided in a small subset of hospitals, such as transplants, neonatal intensive care and level 1 trauma.

(12) TennCare. The TennCare waiver demonstration program(s) and/or Tennessee's traditional Medicaid program.

(13) TennCare Actuary. The actuarial firm selected by the Bureau to assist the Bureau in establishing the capitation rates for TennCare MCOs each year.

(14) Total TennCare Rates. Payment rates for each hospital in the aggregate from all MCOs with which the hospital has network contracts.

(15) Year 1 Corridors. The initial upper and lower limits established by the Bureau in consultation with THA based on a hospital's Medicare reimbursement that existed in FFY 2011 and that were used to implement rate variation limitations in contracts between Tennessee hospitals and TennCare MCOs from July 1, 2012 until July 1, 2013. The Year 1 Corridors are as follows:

(a) For inpatient services, the minimum level was 40% and the maximum level was 90% of the hospital's Medicare for 2011.

(b) For outpatient services, the minimum level was 90% and the maximum level was125% of the hospital's Medicare for 2011.

(c) For cardiac surgery, the minimum level was 30% and the maximum level was 80% of the hospital's Medicare for 2011.

(d) For specialized neonatal services the minimum was 4% and the maximum level was 180% of the hospital's Medicare for 2011.

(e) For other specialized services the minimum level was 30% and the maximum level was 160% of the hospital's Medicare for 2011.

1200-13-05-.02 Implementation of Contract Amendments for Existing Contracts between Hospitals and MCOs.

These contracts set rates for a period of two years effective July 1, 2013, and provided for rate amendments to be negotiated and implemented on July 1, 2015.

(1) For hospitals that had existing contracts with MCOs in place on July 1, 2013, and the MCO and hospital had negotiated contract amendments to bring rates for total TennCare into the Rate Corridors and the rates in the contracts have not been adjusted since July 1, 2013, the MCOs will reissue those amendments with a new effective date of July 1, 2015.

(2) In the case of a hospital that had contracts with MCOs in place on July 1, 2013, which contracts included amendments implementing rates within the Rate Corridors, and where the rates in the contracts have been adjusted since July 1, 2013, the Bureau shall evaluate the rates in the current contracts to determine if the total TennCare rates for the hospital are within the Rate Corridors. If the rate adjustments cause the total TennCare reimbursement for the hospital to be outside of the Rate Corridors, the affected MCOs shall implement contract amendments approved by the Bureau in consultation with the TennCare Actuary to bring the hospital rates into the Rate Corridors effective July 1, 2015.

(3) In the case of a hospital with contracts in existence on July 1, 2013, which contracts include rates outside of the Rate Corridors, the affected MCOs shall implement contract amendments to bring total TennCare rates into the Rate Corridors with an effective date of July 1, 2015. The Bureau shall verify that the new contract rates in conjunction with contracts between the hospital and all other MCOs bring the hospital's total TennCare rates within the Rate Corridors.

1200-13-05-.03 Implementation of New Contracts between Hospitals and MCOs Entered into after July 1, 2013.

These contracts have not yet been in effect for a period of time sufficient to negotiate rate amendments for a July 1, 2015, implementation date. In the case of a hospital that entered into a contract with an MCO

after July 1, 2013, including a hospital that entered into a contract with an MCO with rates within Year 1 Corridors effective January 1, 2015, the affected MCOs shall implement contract amendments that bring the hospital rates within the Rate Corridors no later than September 30, 2015.

1200-13-05-.04 Exclusion of Any Hospital from TennCare Networks.

A hospital that does not accept a contract amendment required by this Rule shall be excluded effective October 1, 2015, from participation in the TennCare MCO network to which the contract amendment applies.

1200-13-05-.05 Out-of-Network Reimbursement.

Out-of-Network payments to all hospitals shall be governed by TennCare Medicaid Rule 1200-13-13-.08(2)(a)-(c) and TennCare Standard Rule 1200-13-14-.08(2)(a)-(c).

1200-13-05-.06 Agreements between Hospitals and MCOs for Limited Services.

Rates for a single case agreement negotiated between the MCOs and hospitals that are not in network with the MCO to ensure access to services for TennCare enrollees may not exceed the ceiling or be below the floor of the Rate Corridors appropriate for those services.

1200-13-05.07 Changes to Hospital Rates Negotiated between MCOs and Hospitals after September 30, 2015.

To ensure that each hospital's total TennCare reimbursement remains within the Rate Corridors, proposed rate changes after September 30, 2015, shall be evaluated by the Bureau to determine if the proposed rate change will move the hospital's total TennCare rates outside of the Rate Corridors. If the evaluation indicates the change will put the hospital outside of the Rate Corridors, the Bureau shall provide the adjustments necessary to ensure that the contract is compliant with the limits of the Rate Corridors. TennCare rates between a hospital and an MCO may not be modified after September 30, 2015, without approval from the Bureau.

1200-13-05-.08 Categorization of New Services Added after July 1, 2015.

MS-DRG classifications serve as the basis for identifying services as inpatient or specialized. MS-DRG classifications may change and new MS-DRG classifications may be added from time to time. New or modified MS-DRG classifications shall be evaluated for assignment to appropriate inpatient or specialized categories by the Bureau in consultation with THA and the TennCare Actuary.

GW10115233redline

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 09/09/2015 (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: 07/02/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/26/15

KATHY CROCKARELL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 9/9/2015

Signature: [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: September 9, 2015

Notary Public Signature: Kathy Crockarell

My commission expires on: January 8, 2019

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

Herbert H. Slatery III
Attorney General and Reporter

9/16/2015
Date

Department of State Use Only

RECEIVED
2015 SEP 21 AM 11:46
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/21/15

Effective on: 12/20/15

Tre Hargett
Secretary of State

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 4-5-202, 71-5-105, and 71-5-109
EFFECTIVE DATES:	December 22, 2015 through June 30, 2016
FISCAL IMPACT:	Decreases State expenditures by $3,846,100
STAFF RULE ABSTRACT:	Amendment to Rule Chapter 1200-13-01 TennCare Long-Term Care Programs: This amendment replaces emergency rules that were promulgated to limit enrollment in CHOICES Group 3 to individuals eligible in an SSI eligibility category, consistent with waiver authority granted to the State in its approved 1115 demonstration.

Public Hearing Comments

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

Comments: A commenter expressed concern that the Emergency Rule does not mention the authority of a PA (Physician Assistant) to order and supervise care in a nursing facility and requested that the rule be amended to include this information.

Response: By definition, Emergency Rules are temporary and do not provide the time required for a comment period, but the same amendments have been filed as a Notice of Rulemaking Hearing. The comments are being treated as a submission to the Notice of Hearing. Please note that the Emergency and Rulemaking Hearing Rule amendments are to rule part 200-13-01-.10(4)(b)2, having to do with applicant's physical need for inpatient nursing care, and do not contain any proposed changes to the ordering or supervision of care. Inclusion of the requested authorization language is beyond the scope of the Rulemaking Hearing Notice.

However, authorization for ordering and supervising care is included in other areas in the rule chapter. Performance of tasks such as certification of a PAE (PreAdmission Evaluation), assessment, and nursing facility visits may be performed by a physician or by a nurse practitioner, clinical nurse specialist, or physician assistant, working in collaboration with a physician. See Rules 1200-13-01-.02(16) and (119), 1200-13-01-.06(4)(b) and 1200-13-01-.10(2)(g). In addition, federal regulation 42 CFR § 483.40 authorizes utilization of PAs to perform physician tasks in nursing facilities and Tennessee follows that regulation.

Comments: Tennessee Health Care Association (THCA) and Response from the Bureau of TennCare

Thank you for your comments on TennCare Rule Chapter 1200-13-01 pertaining to medical eligibility criteria for long-term services and supports. As you note, the proposed rule operationalizes changes for enrollment into CHOICES Group 3, consistent with the terms of the State's approved 1115 waiver. Effective July 1, 2015, new enrollment into CHOICES Group 3 is limited to SSI recipients.

As you also note, Group 3 was originally established in July 2012, upon changing nursing facility level of care criteria. The initial rules for those changes were promulgated as Emergency Rules in order to meet the State's obligations under the FY 2013 Appropriations Act. However, prior to filing the Emergency Rules the State held a public hearing on May 7, 2012, as required by Chapter 971 of the Public Acts of 2012 (T.C.A. § 71-5-1407(a)), in advance of the changes, as well as a rulemaking hearing on September 7, 2012, following the rule's implementation as part of the rulemaking process.

With respect to your concerns regarding 1200-13-01-.10 and "its effect on the entire safety determination process," we do not think these rules affect the process for reviewing and approving safety determination requests. The explicit intent of this rule is to make clear that a safety determination will not be approved on the basis of a person's failure to meet Medicaid financial eligibility criteria for CHOICES Group 3. The safety process has always been about ensuring an appropriate medical eligibility decision. That has not changed. As you know medical eligibility and financial eligibility are distinct determinations. Prior to the program change limiting new enrollment into Group 3 to SSI eligible individuals, Medicaid categorical and financial eligibility had no impact on safety determinations, and that remains the same. As you note, a safety determination may be appropriate "when a patient does not, or may not, meet the standard set forth in the Pre-admission Evaluation (PAE) process which utilizes the aforementioned LOC criteria" (and not financial eligibility criteria).

Further, we respectfully disagree that this rule renders the safety determination process "totally inadequate to meet patient needs and misleading to the public". THCA had previously expressed its support for and agreement with the safety determination process, which helps to ensure an appropriate and more efficient medical eligibility decision. As indicated above, the safety determination process is not changing. We will continue to look carefully

at safety concerns during the PAE process, and when a person cannot be safely served if enrolled in group 3, approve a higher level of care in accordance with the safety determination rule we worked closely with you to improve. When the person's needs can be met in group 3, we will approve at risk level of care, and the person must then qualify financially—which as stated above is a separate eligibility determination process.

Moreover, in regard to your recommendations to "redefine the benchmark for obtaining a safety determination," lower LOC criteria to "a PAE score of 7", and not require "onerous, expensive paperwork needed for a safety determination," we believe the time we have invested in working with you and other stakeholders on developing and refining the safety determination process has resulted in meaningful benefit for both high acuity patients and those with other safety concerns. It allows us to identify those patients for whom NF care is truly appropriate, without casting the net too broadly, which would have significant financial impact to the State, and also result in unnecessary placement in more restrictive settings, in violation of the ADA. We also believe the supporting documentation required by the safety determination process is readily available to nursing homes and necessary in making a level of care decision. We do not believe that simply lowering the score will help to ensure that NF services are available to persons who require that level of care. A person's functional and medical needs as well as other safety concerns should be taken into account when determining whether NF services are the most appropriate placement for a person.

Finally, in reference to your recommendation "TennCare should also consider reinstating the CHOICES 3 program," the CHOICES 3 program is still an operational component of the CHOICES program. It continues to serve the more than 4,000 people enrolled in the group on July 1, 2015, and will continue to enroll new individuals who meet both the medical and new financial eligibility criteria. Because State resources are limited and the population who is aging and who has disabilities is expected to grow exponentially, it is important for the sustainability of the program that we target limited resources to people who need it the most—both from a functional and a financial perspective. This is how the CHOICES program was originally designed in 2008 and approved by CMS in 2009. The expiration of institutional income standards for the Group 3 population has been part of TennCare's approved waiver since 2013 (when federal maintenance of effort provisions expired). Of course, should appropriations become available in order to re-open CHOICES Group 3 to a broader population, we are happy to work with you and with others to determine the most appropriate financial eligibility criteria to apply, and to then seek approval from our federal partners in order to make those changes going forward.

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.

3

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

For Department of State Use Only

Sequence Number: 09-38-15
Rule ID(s): 6050
File Date: 9/23/15
Effective Date: 12/22/15

Rulemaking Hearing Rule(s) Filing Form

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

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

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

Revision Type (check all that apply):

X Amendments
___ 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-.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.

(108~~8~~9) Physical Disabilities.

(a) One or more medically diagnosed chronic, physical impairments, either congenital or acquired, that limit independent, purposeful physical movement of the body or of one or more extremities, as evidenced by substantial functional limitations in one or more ADLs that require such movement—primarily mobility or transfer—and that are primarily attributable to the physical impairments and not to cognitive impairments or mental health conditions. For purposes of eligibility for enrollment in CHOICES Group 2, includes any adult age 21 or older who meets level of care criteria for Medicaid Level 1 reimbursement of care in a nursing facility, CHOICES HCBS and PACE, including requirements set forth in TennCare Rule 1200-13-01-.10(4)(b)2.(ii) and, based upon review of evidence by TennCare, will be institutionalized but for the availability of these services.

(b) An individual with cognitive impairments or mental health conditions who also has one or more Physical Disabilities as defined above may qualify as "Physically Disabled," and may be enrolled into CHOICES Group 2 or CHOICES Group 3 so long as such individual can be safely served in the community and at a cost that does not exceed the individual's Cost Neutrality Cap or Expenditure Cap, as applicable. This includes consideration of whether or not the CHOICES Group 2 or CHOICES Group 3 benefit package, as applicable, adequately addresses any specialized service needs the applicant may have pertaining to the cognitive impairment or mental health condition, as applicable.

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

(4) Level of Care Criteria for Medicaid Level 1 Reimbursement of Care in a Nursing Facility, CHOICES HCBS and PACE.

(a) The NF must have completed the PASRR process, as applicable and as described in 1200-13-01-.10(2)(i) above and pursuant to 1200-13-01-.23.

(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 (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)~~ through approval of a Safety Determination Request to not qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination.

(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 through approval of a Safety Determination Request to not qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination.~~ 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:

GW10215218

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 09/17/2015 (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: 07/02/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/26/15

Date: 9/17/2015

Signature:

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY, TN

Subscribed and sworn to before me on: 9/17/2015

Notary Public Signature:

My commission expires on: 10/18/2016

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.

Herbert H. Slatery III
Attorney General and Reporter

9/22/2015
Date

Department of State Use Only

RECEIVED
2015 SEP 23 PM 12:08
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 9/23/15

Effective on: 12/22/15

Tre Hargett
Secretary of State