

# TAR

TENNESSEE ADMINISTRATIVE REGISTER



December 15, 2000  
Volume 26, Number 12

# TAAAR



**RILEY C. DARNELL**  
Secretary of State

Division of Publications  
8th Floor, Snodgrass Tower  
312 - 8th Avenue North  
Nashville TN 37243 - 0310

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Department of State, Authorization No. 305084, 475 copies, December 2000. This public document was promulgated at a cost of \$ 4.14 per copy.

## PREFACE

**The Tennessee Administrative Register (T.A.R)** is an official publication of the Tennessee Department of State. The *T.A.R.* is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The *T.A.R.* contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

**Emergency Rules** are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the *T.A.R.* after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

**Proposed Rules** are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the *T.A.R.*, the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the *T.A.R.* of the following month.

**Public Necessity Rules** are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the *T.A.R.* Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

**Wildlife Proclamations** contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the *T.A.R.*, they are not published in the official compilation-Rules and Regulations of the State of Tennessee.

**Subscription Orders** - The subscription rate, payable in advance, is \$ 50 per year. An order form may be found in the back of each issue of the *Tennessee Administrative Register*.

**Back Issues** - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

**Copies of Rules from Back Issues** of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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## **ANNOUNCEMENTS**

### **DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 AIR POLLUTION CONTROL BOARD**

#### **NOTICE OF STAY OF EFFECTIVE DATE OF RULES**

The Air Pollution Control Board hereby gives notice that the seventy-five (75) day period for the standards for Cement Kilns, rule 1200-3-27-.04, filed with the Department of State on the 26th day of September 2000, to have become effective on the 10th day of December 2000, is hereby stayed for 60 days.

The Notice of Stay of Effective Date of Rules was properly filed in the Department of State on the 22nd day of November, 2000, and will be effective from the date of filing for a period of 60 days. The stay of effective date of rules will remain in effect through the 8th day of February, 2001, unless properly withdrawn by the agency. (11-27)

### **DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 AIR POLLUTION CONTROL BOARD**

#### **NOTICE OF STAY OF EFFECTIVE DATE OF RULES**

The Air Pollution Control Board hereby gives notice that the seventy-five (75) day period for the NOx Budget Tracing Program for State Implementation Plans (40 CFR 96), rule 1200-3-27-.06, filed with the Department of State on the 20th day of September 2000, to have become effective on the 4th day of December 2000, is hereby stayed for 60 days.

The Notice of Stay of Effective Date of Rules was properly filed in the Department of State on the 22nd day of November, 2000, and will be effective from the date of filing for a period of 60 days. The stay of effective date of rules will remain in effect through the 2nd day of February, 2001, unless properly withdrawn by the agency. (11-26)



**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180****ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 13.50 per cent.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180****ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of January, 2001 is 9.66 per cent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the published rate is 5.80 per cent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P. L. 96-221 as amended by P. L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

**GOVERNMENT OPERATIONS COMMITTEES****ANNOUNCEMENT OF PUBLIC HEARINGS**

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of November, 2000. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTI DATE
11-01	Nov 14, 2000	0870 Massage Licensure Bd	Rulemaking Hearing Rules	Amendments	Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments 0870-1-.06 Fees	Robbie Bell, OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 29, 2
11-02	Nov 15, 2000	0260 Bd of Chiropractic Examiners	Rulemaking Hearing Rules	Repeal and New Rules	Chapter 0260-5 General Rules Governing Chiropractic Therapy Assistants 0260-5-.01 Definitions 0260-5-.02 Scope of Practice 0260-5-.03 Necessity of Certification 0260-5-.04 Qualifications for Certification 0260-5-.05 Procedures for Certification 0260-5-.06 Fees 0260-5-.07 Application Review, Approval, Denial, Interviews 0260-5-.08 Examination 0260-5-.09 Renewal of Certification 0260-5-.10 Supervision 0260-5-.11 Retirement and Reactivation 0260-5-.12 Continuing Education 0260-5-.13 Professional Ethics 0260-5-.14 Disciplinary Action and Civil Penalties 0260-5-.15 Certificate 0260-5-.16 Change of Address and/or Name 0260-5-.17 Advertising	Robert A. O'Connell OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 30, 2
11-04	Nov 15, 2000	1200 Dept of Environment and Conservation Division of Water Pollution Control	Rulemaking Hearing Rules	Amendments	Chapter 1200-4-11 Rules of the Water Quality Control Bd 1200-4-11-.01 General 1200-4-11-02 Fees 1200-4-11-.03 Schedule for Timely Action	Alan Lieserson OGC Snodgrass Twr 312 8 <sup>th</sup> Ave N Nashville TN 37243-1548 615-532-0125	Jan 30, 2
11-05	Nov 15, 2000	0960 Motor Vehicle Commission	Rulemaking Hearing Rules	New Rules	Chapter 0960-1 General Rules 0960-1-.15 Liability Insurance and Workers' Compensation 0960-1-.16 Automobile Auction Minimum Requirements 0960-1-.17 Motor Vehicle Show Minimum Requirements 0960-1-.18 Exemptions for Auctions of Motor Vehicles for Estate Sales and for Nursing or Health Care Home Expenses	E. Ross White, Staff Attorney BPR #014685 Commerce and Insurance 312 8th Ave N 25 <sup>th</sup> Fl, TN Twr Nashville, TN 37243-0569 615-741-3072	Jan 30, 2

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTI DATE
11-05 cont.					0960-1-.19 Compliance with State and Sales of Used Motor Vehicles by Unlicensed Individuals 0960-1-.20		
11-09	Nov 15, 2000	<b>0620</b> <b>Dept of Finance and Administration</b> Bureau of TennCare	Public Necessity Rules	Amendments	Chapter 1200-13-12 <i>Bureau of TennCare</i> 1200-13-12-.11 Appeal of Adverse Actions Affecting a TennCare Program Enrollee	George Woods Bureau of TennCare 729 Church St Nashville Tn 37243-6501 615-741-0145	Nov 15, 2 through A 16, 2001
11-10	Nov 16, 2000	<b>1720</b> University of TN - 1720	Proposed Rules	Amendments	1720-1-5 <i>Procedure for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act</i> 1720-1-5-.01 Hearings in Contested Cases As Defined By The "Uniform Administrative Procedures Act" (Apa)	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-11	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN (All Campuses)	Proposed Rules	Amendments	1720-1-7 <i>Solicitation on University Property</i> 1720-1-7-.03 Solicitation in Non-Public Areas of the University	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-12	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN (All Campuses)	Proposed Rules	Amendments	1720-1-10 <i>University Identification Card</i> 1720-1-10-01 University Identification	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-13	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	Chapter 1720-3-1 <i>Honor Code</i> 1720-3-1-01 The Honor Code 1720-3-1-02 Procedures and Hearing Options 1720-3-1-03 Procedures and Hearing Options Addendum (College Honor Councils)	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-14	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	Chapter 1720-3-3 <i>Student Rights and Responsibilities</i> 1720-3-3-01 Introduction 1720-3-3-02 Standards of Conduct 1720-3-3-03 Student Identification Cards 1720-3-3-04 Investigations of Student	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170	March 30 2001

## ANNOUNCEMENTS

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-14 cont.					1720-3-3-05 Conduct Judicial Systems and Due Process	(865) 974-3247	
11-15	Nov 16, 2000	<b>1720 University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	<i>Chapter 1720-3-4 The Registration and Conduct of Student Organizations</i> 1720-3-4-02 Student Organization Registration	Ronald C. Leadbetter The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-16	Nov 16, 2000	<b>1720 University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	<i>Chapter 1720-3-5 Maintenance of Ethical and Professional Standards</i> 1720-3-5-01 Maintenance of Ethical and Professional Standards	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-17	Nov 16, 2000	<b>1720 University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	<i>Chapter 1720-3-6 Student Housing Regulations</i> 1720-3-6-04 Housing Contracts	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-18	Nov 16, 2000	<b>1720 University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	<i>Chapter 1720-3-7 Traffic and Parking Regulations</i> 1720-3-7-01 General 1720-3-7-02 Violations and Penalties 1720-3-7-03 Impoundment of Vehicles 1720-3-7-04 Appeals	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-19	Nov 16, 2000	<b>1720 University of TN</b> The University of TN Health Science Center	Proposed Rules	Amendments	<i>Chapter 1720-4-2 Types of Registered Student Organizations</i> 1720-4-2-01 Policy Overview 20-4-2-02 Categories of Student Organizations 1720-4-2-03 Sororities and Fraternities 1720-4-2-04 Advisory Committee on Student Organizations 1720-4-2-05 Registration Process 1720-4-2-09 Terms of Registration 1720-4-2-10 Appeals 1720-4-2-11 Affiliations	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-20	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN	Proposed Rules	Amendments	1720-4-3 <i>Student Rights and Responsibilities</i> 1720-4-3-.05 Inspection and Search Policy 1720-4-3-.08 The Hearing Boards 1720-4-3-.09 Penalties 1720-4-3-.10 Appeal and Scope of Review 1720-4-3-.12 Student Academic Conduct 1720-4-3-.13 Emergency Powers 1720-4-3-.15 Termination of Student Employees 1720-4-3-.16 Termination of Financial Assistance 1720-4-3-.17 Withdrawal of Temporary Suspension due to Mental or Physical Problems	Amendments	March 30 2001
11-21	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN	Proposed Rules	Amendments	1720-4-5 <i>Traffic and Parking Regulations</i> 1720-4-5-01 General 1720-4-5-02 Registration of Vehicles 1720-4-5-03 Staff Space Allocation and Parking Assignment 1720-4-5-05 Violations 1720-4-5-06 Enforcement 1720-4-5-07 Penalties 1720-4-5-08 Appeals 1720-4-5-10 Special Occasions and Emergencies	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-22	Nov 16, 2000	<b>1720</b> <b>University of TN</b> The University of TN	Proposed Rules	Amendments	1720-4-9 <i>Code of Academic Conduct – College of Law</i> 1720-4-9-.05 Administration of the Code	Ronald C. Leadbetter Associate General Counsel The University of TN Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247	March 30 2001
11-26	Nov 22, 2000	<b>0400</b> <b>Dept of Environment and Conservation</b> Air Pollution Control Bd	Notice of Stay		1200-3-27-.06 Original amendment filed Sept 20, 2000; effective Dec 4, 2000 New effective date: Feb 2, 2001	John Patton 532-0604	
11-27	Nov 22, 2000	<b>0400</b> <b>Dept of Environment and Conservation</b> Air Pollution Control Bd	Notice of Stay		1200-3-27-.04 Original amendment filed Sept 26, 2000; effective Dec 10, 2000 New effective date: Feb 8, 2001	John Patton 532-0604	
11-29	Nov 22, 2000	<b>0420</b> <b>Dept of Correction</b> Adult Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 0420-3-4</i> <i>Selection of News Media Agency Representatives to Attend an Execution of a Death Sentence</i>	Debra K. Inglis OGC 25 <sup>th</sup> Fl, Snodgrass Bldg 312 8th Ave N Nashville, TN 37243-0465	Feb 6, 20

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-29 cont.					0420-3-4-.01 Preface 0420-3-4-.02 Applicability 0420-3-4-.03 Definitions 0420-3-4-.04 Application and Selection Process 0420-3-4-.05 Witness Guidelines	615-741-3087	
11-31	Nov 22, 2000	<b>1000</b> Bd of Nursing	Rulemaking Hearing Rules	Amendments	Chapter 1000-1 Rules And Regulations Of Registered Nurses Discipline of Licensees, 1000-1-.04 Unauthorized Practice of Professional Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs Chapter 1000-1-.15 Scope of Practice Nurses 1000-2 Rules and Regulations of Licensed Practical 1000-2-.04 Discipline of Licensees, Unauthorized Practice of Practical Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs 1000-2-.15 Scope of Practice	John Fitzgerald OGC 26th Fl, Snodgrass TN Twr 312 8th Ave N, Nashville, TN 37247-0120 615-741-1611	Feb 6, 20
11-37	Nov 27, 2000	<b>0870</b> Massage Licensure Bd	Rulemaking Hearing Rules	Amendments	Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments 0870-1-.02 Practice Standards and Inspection of Establishments	Robbie Bell, OGC 26th Fl, Snodgrass Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Feb 10, 2
11-39	Nov 21, 2000	<b>0400</b> Dept of Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	Chapter 1200-1-11 Hazardous Waste Management 1200-1-11-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage and Disposal Facilities 1200-1-11-.06 Standards For Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 1200-1-11-.08 Fee System For Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous	Mr. Gerald Ingram Division of Solid Waste Mgmt. 5th FL & C Annex 401 Church St Nashville, TN 37243-1531 (615) 532-0850	February 2001

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-39 cont.					1200-1-11-.09 Wastes and For Certain Used Oil Standards For the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities		
11-40	Nov 27, 2000	<b>0400 Dept of Environment and Conservation</b> Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	Chapter 1200-1-7 <i>Solid Waste Processing and Disposal</i> 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste	Glenn Birdwell Solid Waste Management L&C Twr, 5 <sup>th</sup> Fl 401 Church St Nashville Tn 37243 532-0788	Feb 10, 2
11-45	Nov 30, 2000	<b>0800 Dept of Labor and Workforce Development</b> Division of Occupational Safety and Health	Proposed Rules	Amendments	Chapter 0800-1-1 <i>Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards Chapter 0800-1-5 <i>Safety And Health Provisions For The Public Sector</i> 0800-1-5-.05 Recordkeeping and Reporting Requirements for Occupational Injuries, Illnesses and Accidents Chapter 0800-1-6 <i>Occupational Safety and Health Standards for Construction</i> 0800-1-6-.03 Citation and Adoption of Federal Standards Chapter 0800-1-7 <i>Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Citation and Adoption of Federal Standards	Michael M. Maenza Occupational Safety and Health Dept of Labor and Workforce Development 3 <sup>rd</sup> Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN 37243-0659 (615) 741-7036	March 30 2001

**DEPARTMENT OF HEALTH - 1200  
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

**NOTICE OF WITHDRAWAL OF RULE**

The Department of Health hereby withdraws the following language from rule 1200-23-1-.03(3)(d) Establishment Permitting and Inspection System which is part of the rules for Food Service Establishments which become effective on November 7, 2000. The language is inconsistent with the applicable statute. T.C.A. 68-14-318(b).

An opportunity for a hearing concerning the inspection and/or inspection report and/or on the ordered corrective action will be provided, if written request is filed with the Commissioner within ten (10) calendar days following the inspection.

This notice of withdrawal of rules was properly filed in the Department of State on the 3rd of November, 2000.



**HEALTH FACILITIES COMMISSION - 0720****NOTICE OF BEGINNING OF REVIEW CYCLE**

Applications will be heard at the January 24, 2001 Health Facilities Commission Meeting except as otherwise noted.

\*Denotes applications being placed on the Consent Calendar.

+Denotes applications under simultaneous review.

This is to provide official notification that the Certificate of Need applications listed below have begun their official 90-day review cycle effective November 1, 2000. The review cycle includes a 60-day period of review by the Division of Assessment and Planning within the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. During this 60-day period, the Department of Health may hold a public hearing, if requested, with respect to each application and will conclude the period with a written report. *Pursuant to Public Chapter 120, Acts of 1993, certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a 60-day review cycle, including a 30-day period of review by the Department of Health, Division of Assessment and Planning or the Department of Mental Health and Mental Retardation. Applications intended to be considered on the consent calendar, if any, are denoted by an asterisk.*

Pursuant to T.C.A., Section 68-11-108(h)(1) effective April 5, 2000, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Tennessee Health Facilities Commission and serve a copy on the contact person no later than fifteen (15) days before the regularly scheduled Tennessee Health Facilities Commission meeting at which the application will be heard.

For more information concerning each application or its review cycle, you may contact the Tennessee Department of Health/ Division of Assessment & Planning (615/741-0244), their designee, or the Health Facilities Commission (615/741-2364).

## NAME AND ADDRESS

## DESCRIPTION

Metropolitan Nashville General Hospital  
1818 Albion Street  
Nashville (Davidson Co.), TN 37208  
Roxanne Spitzer – (615)—341-4491  
CN0010-093

The establishment of a cardiac catheterization laboratory. The proposed laboratory is to be located at 1818 Albion Street within the Metropolitan Nashville General Hospital in Nashville (Davidson County), Tennessee.  
\$ 1,726,542.65

Chattanooga-Hamilton County Hospital  
Authority d/b/a Erlanger Soddy-Daisy  
9448 Dayton Pike  
Soddy-Daisy (Hamilton Co.), TN 37379  
Martin S. McKay – (423)—778-3286  
CN0010-094

The establishment of an ambulatory surgical treatment center and outpatient diagnostic center to be located at 9448 Dayton Pike in Soddy-Daisy, Tennessee. The facility is within the Erlanger Soddy-Daisy urgent care facility, formerly the ARCON of Tennessee/Soddy-Daisy, ASTC/ODC. The ASTC will contain two (2) operating suites.  
\$ 3,203,445.00

## NAME AND ADDRESS

## DESCRIPTION

Parkridge Health Systems, Inc.  
 d/b/a Parkridge Medical Center  
 2333 McCallie Avenue  
 Chattanooga (Hamilton Co.), TN 37404  
 Niels Vernegaard – (423)—493-1488  
 CN0010-095

The establishment of a positron emission tomography (PET) services through the use of a mobile PET scan unit, on a one day per week basis, to be located on the campus of Parkridge Medical Center at 2333 McCallie Avenue in Chattanooga (Hamilton County), Tennessee.  
 \$ 509,207.00

Methodist Medical Center Home Health Services, Inc.  
 d/b/a Covenant Homecare  
 9000 Executive Park Drive, Suite A-203  
 Knoxville (Knox Co.), TN 37923  
 John Huskey – (865)—374-0602  
 CN0010-096

The relocation of the parent office of Methodist Medical Center Home Health Services d/b/a Covenant Homecare from 1530 West Andrew Johnson Highway in Morristown, Tennessee to 9000 Executive Park Drive, Suite A-203 in Knoxville (Knox County), Tennessee. The service area will remain the same and consists of the following counties: Anderson, Blount, Campbell, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Knox, Loudon, Morgan, Roane, Scott, Sevier and Union Counties.  
 \$ 150,680.00

Morristown-Hamblen Hospital  
 908 West Fourth North Street  
 Morristown (Hamblen Co.), TN 37814  
 Carol Wolfenbarger – (423)—586-4231  
 CN0010-097

The initiation of lithotripsy services and the acquisition of a Dornier Compact Delta lithotripsy unit at Morristown-Hamblen Hospital.  
 \$ 670,000.00

Urology Ambulatory Surgery Center  
 Wolf Park Drive  
 Germantown (Shelby Co.), TN 37814  
 Patricia Greenberg – (615)—376-9995  
 CN0010-098

The establishment of an ambulatory surgical treatment center limited to urological procedures. The proposed facility is to be located at Lots 13, 14, and 15 on Wolf Park Drive (adjacent to Wolf River Boulevard) in Germantown (Shelby County), Tennessee. The applicant proposed to lease 15,360 square feet of space in a one-story medical office building that will contain four (4) operating rooms.  
 \$ 9,641,154.00

Loden Vision Surgery Center  
 907 Two Mile Parkway, Suite C-2010  
 Goodlettsville (Davidson Co.), TN 37072  
 John Wellborn – (615)—269-0070  
 CN0010-099

The establishment of an ambulatory surgical treatment center limited to ophthalmic surgical procedures. The proposed facility is to be located at 907 Two Mile Parkway, Suite C-2010, in Goodlettsville (Davidson County), Tennessee and will contain one (1) operating room.  
 \$ 1,123,930.00

NAME AND ADDRESS	DESCRIPTION
Baptist Memorial Hospital 6019 Walnut Grove Road Memphis (Shelby Co.), TN 38120 Arthur Maples – (901)—227-4137 CN0010-100	The modification and renovation of the hospital campus including the relocation of two-hundred and seventy-two (272) beds from the Madison Avenue location to the Walnut Grove location that were previously approved under CN9712-095A. The total acute beds at the Walnut Grove location licensed under the Baptist Memorial Hospital license will remain at eight-hundred and forty-six (846) beds, as previously approved. This application will include the adjustments to construction that resulted in additional costs to CN9712-095A. This application also includes the purchase of a fixed MRI and relocation of certain administrative functions from the Madison Avenue to Walnut Grove location that were not a part of CN9712-095A. \$ 205,397,900.00 (Includes cost from approved CON 9712-095A)
Saint Francis Hospital-Bartlett Kate Bond Road near Hwy. 64 Bartlett (Shelby Co.), TN 38133 William H. West – (615)—259-1450 CN0010-101	The establishment of a new 90-bed acute care hospital originally approved under CN9712-091 on Kate Bond Road in Bartlett, Shelby County, Tennessee. Upon licensure of the new facility, Saint Francis Hospital (located at 5959 Park Avenue) will de-license ninety (90) beds. \$ 57,155,953 (Includes cost from approved CON 9712-091A)
Middle Tennessee Medical Center, Inc. 301 Wolverine Trail, Suite 103 Smyrna (Rutherford Co.), TN 37167 E. Graham Baker – (615)—383-3332 CN00101-102	The establishment of an outpatient diagnostic center, acquire a magnetic resonance imaging unit, a Hitachi Aries II 0.3T permanent magnet system, and to initiate MRI scanning services. The proposed outpatient diagnostic center will be located at 301 Wolverine Trail, Suite 103 in Smyrna (Rutherford County), Tennessee. \$ 1,948,800.00
Friendship Home Health Agency, L.L.C. 1326 Eighth Avenue North Nashville (Davidson Co.), TN 37208 E. Graham Baker – (615)—383-3332 CN0010-103	The expansion of the service area for Friendship Home Health Agency and to initiate home care agency services to the following additional Tennessee counties: Montgomery, Dickson, Humphreys, Hickman, Maury, Marshall, Bedford, Coffee, Grundy, Warren, Cannon, DeKalb, Smith, Trousdale and Macon. Friendship Home Health Agency is currently licensed to serve the following Tennessee counties: Davidson, Cheatham, Robertson, Sumner, Wilson, Rutherford and Williamson counties. The parent office is located at 1326 Eighth Avenue North in Nashville (Davidson County), Tennessee. \$ 185,000.00

## **EMERGENCY RULES**

### **EMERGENCY RULES NOW IN EFFECT**

*(For the text of the Emergency rules see issue of T.A.R. cited)*

- 1500 - Tennessee Human Rights Commission, emergency rule providing for the hiring of private contractors to investigate complaints of discrimination, chapter 1500-1, Rules for Acting Upon Complaints of Discrimination, 10 T.A.R. (October 2000) - Effective September 7, 2000 through February 18, 2001. (09-16)
- 1500 - Tennessee Human Rights Commission, emergency rule providing for the hiring of private contractors to investigate complaints of discrimination, chapter 1500-1, Rules for Acting Upon Complaints of Discrimination, 10 T.A.R. (October 2000) - Effective September 7, 2000 through February 18, 2001. (09-13)
- 1660 - Wildlife Resources Commission - Emergency rules dealing with waterfowl blind sites, Chapter 1660-1-2, Rules and Regulations for Birds; and Chapter 1660-1-8, Rules and Regulations for Hunts, 10 T.A.R. (October 2000) - Effective September 6, 2000 through February 19, 2001. (09-19)

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## **PROPOSED RULES**

### **DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

#### **CHAPTER 0800-1-1 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR GENERAL INDUSTRY**

Presented herein are proposed amendments of the Division of Occupational Safety and Health, Department of Labor and Workforce Development submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Division of Occupational Safety and Health, Department of Labor and Workforce Development to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 26<sup>th</sup> Floor, William R. Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243-0293, and in the Administrative Procedures Division of the Department of State, 8<sup>th</sup> Floor, William R. Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243-0310, and must 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.

For a copy of the entire text of the proposed amendments, contact: Michael M. Maenza, Manager of Standards and Procedures, Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development, 3<sup>rd</sup> Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendments is as follows:

#### **AMENDMENTS**

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by adding the words “and Workforce Development” following the words “Commissioner of Labor” and by changing the date in the second line from “December 31, 1998” to “September 30, 2000”, so that as amended that paragraph shall read:

- (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 September 30, 2000 except as provided in Rule 0800-1-1-.07 of this chapter.

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

**CHAPTER 0800-1-5  
SAFETY AND HEALTH PROVISIONS  
FOR THE PUBLIC SECTOR**

Paragraph (9) of Rule 0800-1-5-.05 Recordkeeping and Reporting Requirements for Occupational Injuries, Illnesses and Accidents is amended by deleting the same in its entirety and by substituting instead the following:

- (9) Reporting of Fatality or Multiple Hospitalization Accidents. Within eight (8) hours after the death of any employee from a work-related incident or the hospitalization of three (3) or more employees as the result of a work-related incident, the employer of any employees so affected shall orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development, that is nearest to the site of the incident, or by calling the TOSHA Central Office. TOSHA Central and Area Office telephone numbers are listed on the NOTICE required to be posted in all workplaces by Tennessee Department of Labor and Workforce Development Rule 0800-1-4-.03(1). The Commissioner may require such additional reports in writing or otherwise, as he deems necessary, concerning the accident.

*Authority:* T.C.A. §§4-3-1411, 50-3-906 and 50-3-910.

**CHAPTER 0800-1-6  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS FOR CONSTRUCTION**

Paragraph (2) of Rule 0800-1-6-.03 Citation and Adoption of Federal Standards is amended by adding the words “and Workforce Development” following the words “Commissioner of Labor” and by changing the date in the second line from “December 31, 1998” to “September 30, 2000”, so that as amended that paragraph shall read:

- (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 September 30, 2000 except as provided in Rule 0800-1-1-.07 of this chapter.

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

**CHAPTER 0800-1-7  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS FOR AGRICULTURE**

Paragraph (2) of Rule 0800-1-7-.01 Citation and Adoption of Federal Standards is amended by adding the words “and Workforce Development” following the words “Commissioner of Labor” and by changing the date in the second line from “December 31, 1998” to “September 30, 2000”, so that as amended that paragraph shall read:

- (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 September 30, 2000 except as provided in Rule 0800-1-1-.07 of this chapter.

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

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of March, 2001. (11-45)

**THE UNIVERSITY OF TENNESSEE - 1720**  
**THE UNIVERSITY OF TENNESSEE**  
**(ALL CAMPUSES)**

**1720-1-5**

**PROCEDURE FOR CONDUCTING HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE UNIFORM ADMINISTRATIVE PROCEDURES ACT**

Presented herein are proposed amendments of The University of Tennessee submitted pursuant to Tennessee Code Annotated, Section 4-5-202, in lieu of a rulemaking hearing. It is the intent of The University of Tennessee to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed amendments are published. Such petition to be effective must be filed in Room 719, Andy Holt Tower, The University of Tennessee, Knoxville, Tennessee 37996-0170, and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37243-0310, and must 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.

For a copy of the proposed amendments, contact Ronald C. Leadbetter, Associate General Counsel, The University of Tennessee, Office of General Counsel, 719 Andy Holt Tower, Knoxville, TN 37996-0170, telephone number (865) 974-3247.

The text of the proposed amendments is as follows:

**AMENDMENTS**

Rule 1720-1-5-.01 Hearings In Contested Cases As Defined By The “Uniform Administrative Procedures Act” (Apa) (1) is amended by adding “may” following the second “contested cases” so that, as amended, the paragraph reads:

Contested cases refers to a proceeding in which the legal rights, duties or privileges of a University student or employee or other individual are required by any statute or constitutional provision to be determined by the University only after that individual has been provided an opportunity for a hearing.

Contested cases may include, but are not limited to:

- (a) Student disciplinary proceedings;
- (b) Employee disciplinary proceedings;
- (c) Traffic and parking violation proceedings;

Rule 1720-1-5-.01(3) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (3) The conduct of all aspects of a hearing provided in a contested case shall be by a hearing examiner designated by the President or the appropriate Vice President/Provost or Chancellor (hereinafter referred to as “Agency Head”).

Rule 1720-1-5-.01(4)(a) is amended by adding “examiner” in the second sentence so that, as amended, the subparagraph reads:

- (a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default. Failure to comply with any lawful order of the hearing examiner, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.



Rule 1720-1-5-.01(5)(g) is amended by deleting “members of the agency” and substituting “the Agency Head” in the first sentence of the first paragraph so that, as amended, the subparagraph reads:

- (g) All staff memoranda or data submitted to the hearing officer or the Agency Head in connection with their consideration of the case.

A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party, at his expense, or may be transcribed by the University at its expense. If the University elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the University of a reasonable compensatory fee.

Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Rule 1720-1-5-.01(11)(b) is amended by deleting “Chancellor’s (or President’s)” and substituting “Agency Head’s” so that, as amended, the subparagraph reads:

- (b) Hearing examiner introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the hearing examiner’s and the Agency Head’s role in the hearing process;

Rule 1720-1-5-.01(12)(a) is amended by deleting “Chancellor” and substituting “Agency Head” so that, as amended, the subparagraph reads:

- (a) Upon completion of the hearing, the hearing examiner shall render an initial order, which shall become a final order unless review is sought by a party or the Agency Head in the manner hereinafter described.

Rule 1720-1-5-.01(12)(e) is amended by deleting “Chancellor” and substituting “Agency Head” so that, as amended, the subparagraph reads:

- (e) If a hearing examiner becomes unavailable, for any reason, before rendition of the initial or final order, a substitute shall be appointed by the Agency Head. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

Rule 1720-1-5-.01(13) is amended by deleting “Chancellor” and substituting “Agency Head” so that, as amended, the paragraph reads:

(13) Review of Initial Order.

- (a) The Agency Head upon his own motion may, and upon appeal by any party shall, review an initial order, except to the extent that such review is restricted or prohibited by law or rule of The University of Tennessee.
- (b) A petition for appeal from an initial order shall be filed with the Agency Head within ten (10) days after entry of the initial order. If the Agency Head on his own motion decides to review an initial order, the Agency Head shall give written notice of his intention to review the initial order within ten (10) days after its entry. The ten (10) day period to file a petition for appeal or for the Agency Head to give notice of his intention to review an initial order on his own motion shall be tolled by submission of a timely petition for reconsideration of the initial order in the manner hereinafter stated, and a new ten (10) day period shall start to run upon disposition of the petition for reconsideration and to a petition for appeal or to review by the Agency Head on his own motion, the petition for reconsideration shall be disposed of first, unless the Agency Head determines that action on the petition for reconsideration has been unreasonably delayed.

- (c) The petition for appeal shall state its basis. If the Agency Head on his own motion gives notice of his intent to review an initial order, the Agency Head shall identify the issues that he intends to review.
- (d) The Agency Head, in reviewing an initial order, shall exercise all the decision making power that he would have had had he presided over the hearing himself, except to the extent that the issues subject to review are limited by law or rule of the University or by the Agency Head upon notice to all parties.
- (e) The Agency Head shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.
- (f) Before rendering a final order, the Agency Head may cause a transcript to be prepared, at the University's expense, of such portions of the proceeding under review as the Agency Head considers necessary.
- (g) The Agency Head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the hearing examiner who rendered the initial order. Upon remanding a matter, the Agency Head may order such temporary relief as is authorized and appropriate.
- (h) A final order or an order remanding the matter for further proceedings pursuant to this section, shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.
- (i) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference Page 4 of 7 pages to the initial order, all the matters required to be included in an initial order.
- (j) The Agency Head shall cause copies of the final order or order remanding the matter for further proceedings to be delivered to each party and to the hearing examiner who conducted the contested case.

Rule 1720-1-5-.01(15)(b) is amended by deleting the current language and substituting new language so that, as amended, the subparagraph reads:

- (b) All initial orders shall be signed by the hearing examiner conducting the subject contested case, or a substitute duly appointed by the Agency Head, and all final orders shall be signed by the Agency Head or another University official duly authorized by the Agency Head to sign such final order in his absence.

Rule 1720-1-5-.01(16) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (16) Ex parte communication.
  - (a) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing examiner or an Agency Head serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communications.
  - (b) Notwithstanding subsection (a), a hearing examiner or Agency Head may communicate with staff assistants, members of the Attorney General's staff, or outside counsel if such persons do not receive ex parte communications of a type that the hearing examiner or Agency Head would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record.

- (c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with the Agency Head or any person serving as a hearing examiner, without notice and opportunity for all parties to participate in communication.
- (d) If the Agency Head or hearing examiner, before serving in that capacity, receives an ex parte communication of the type which may not properly be received while serving, he shall promptly disclose such communication to all parties to the contested case.
- (e) A hearing examiner or Agency Head who receives an ex parte communication in violation of this section shall place in the record of the pending matter all written communications received, all written responses to the communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses, made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

*Authority:* T.C.A. §49-9-301(e).

(11-10)

**THE UNIVERSITY OF TENNESSEE  
(ALL CAMPUSES)**

**CHAPTER 1720-1-7  
SOLICITATION ON UNIVERSITY PROPERTY**

**AMENDMENTS**

Rule 1720-1-7-.03 Solicitation in Non-Public Areas of the University is amended by deleting “Dean of Students Office” and substituting “Office of the Chief Student Affairs Officer” so that, as amended, the paragraph reads:

- (3) Requests for approval of any form of solicitation must be made in writing to the Office of the Chief Student Affairs Officer not later than seven business days preceding the date of the proposed date of the activity. Special forms for making requests are provided in the Office of the Chief Student Affairs Officer. Following content approval by the Office of the Chief Student Affairs Officer, the requesting organization must make appropriate arrangements and scheduling with the administrative office of the facility to be used. Content approval for the project is not a guarantee of the availability of the space. The Office of the Chief Student Affairs Officer will assist the organization in scheduling and coordinating outdoor space with the appropriate Facilities Management Office. Ordinarily, the academic buildings and the non-public areas of the Residence Halls will not be used for purposes of solicitation.

*Authority:* T.C.A. §49-9-301(e).

(11-11)

**THE UNIVERSITY OF TENNESSEE  
(ALL CAMPUSES)**

**CHAPTER 1720-1-10  
UNIVERSITY IDENTIFICATION CARD**

**AMENDMENTS**

Rule 1720-1-10-.01 University Identification is amended by deleting “signature” and substituting “signature and/or photo” so that, as amended, the rule reads:

**UNIVERSITY IDENTIFICATION.** Each student at The University of Tennessee is required to obtain and carry an official University identification card. This card is used to check out books from the library, use University check cashing services, gain admission to certain events sponsored by the University or student organizations, obtain discounts on items from certain local business, and establish the student’s right to use University facilities. The card is property of the University and may be reclaimed if used by any person other than the one whose signature and/or photo it bears. The identification card must be shown when requested by any University official.

*Authority:* T.C.A. §49-9-301(e).

(11-12)

**HEALTH SCIENCE CENTER**

**1720-3-1  
HONOR CODE**

**AMENDMENTS**

Rule 1720-3-1-.01 The Honor Code (1)(a) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the subparagraph reads:

- (a) The Honor Code of The University of Tennessee Health Science Center is promulgated so that student academic affairs are conducted under the highest standards of individual responsibility. The Honor Code promotes personal honor and integrity, in the best traditions of the health science professions. The Honor Code promotes academic honesty and integrity in the classroom, laboratory, clinics and other academic endeavors. The Honor Code requires students to uphold its principles of fairness, professionalism, and ethical behavior; and it also provides procedures to adjudicate alleged violations. By their pledge to subscribe to and uphold this Honor Code, UT Health Science Center students assume the responsibility for the effective application of the Honor Code, and their own academic and professional honesty and integrity. Students are required to sign the honor code pledge as a condition for enrollment at UT Health Science Center.

Rule 1720-3-1-.01 The Honor Code (2)(e) is amended by deleting “Office of Student Affairs” and substituting “Office of Student Life” so that, as amended, the subparagraph reads:

- (e) **ORIENTATION:** All entering students are given instructions and information regarding the Honor Code during student orientation. The orientation includes the purpose, pledge, rules, and procedures relating to the Honor Code.

Supplemental orientations with updated information is available to all enrolled students from the Office of Student Life.

Each college is responsible for administering an orientation program for its students. Additional information and materials relating to the Honor Code may be obtained from the Office of Student Life.

Rule 1720-3-1-.01 The Honor Code (4)(a)1 is amended by deleting “Memphis” and substituting “the Health Science Center” so that, as amended, the part reads:

1. **STUDENTS:** The Honor Code pledge is signed by all students enrolled at the UT Health Science Center. This signed pledge is a student’s pledge of honesty and integrity. The pledge obligates the student to support the ethics and provisions of the UT Health Science Center Honor Code and to participate in its procedures and actions.

Rule 1720-3-1-.01 The Honor Code (4)(a)3(ii) is amended by deleting “Office of Vice Chancellor for Student Affairs” and substituting “Office of Student Life” so that, as amended, the subpart reads:

- (ii) The Office of Student Life provides advice and orientation to College Honor Council members, faculty advisors, and other students.

Rule 1720-3-1-.02 Procedures and Hearing Options (2)(b)3(i) is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the subpart reads:

- (i) The student has a right to a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act (UAPA), T.C.A. §§ 4-5-301 through 4-5-325. The hearing will be held under the provisions of the UAPA in the absence of a voluntary written waiver of this right.

If the student waives the right to a hearing under UAPA, the hearing will be held in accordance with the UT Health Science Center Honor Council Hearing procedures listed under Article VII, Hearing Court Options 2 and 3. [Rule 1720-3-1-.02(3)(a) 2 and 3].

Rule 1720-3-1-.02 Procedures and Hearing Options (2)(b)3(iii) is amended by deleting “Vice Chancellor for Student Affairs” and substituting “Director of Student Life” so that, as amended, the subpart reads:

- (iii) In College Honor Court and University Honor Court hearings, the College Honor Council President or the Director of Student Life will make available to an accused student, an advisor (student, faculty, or staff) knowledgeable of the Honor Code and hearing procedures. The advisor will be available to the accused prior to, and during the hearing.

Rule 1720-3-1-.02 Procedures and Hearing Options (3)(a)1 is amended by deleting “Chancellor” and substituting “Vice President for Health Affairs” and by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the part reads:

1. **Uniform Administrative Procedures Act (UAPA).** This act provides students a hearing under the State of Tennessee mandatory hearing option. A hearing under this law is held by a hearing officer appointed by the Vice President for Health Affairs of UT Health Science Center. The Office of General Counsel

will prosecute the charge in UAPA hearings, even if the accused student is not represented by legal counsel. This hearing procedure is used in the absence of a voluntary written waiver of this right.

Rule 1720-3-1-.02 Procedures and Hearing Options (3)(a)2 is amended by deleting “Memphis” and substituting “Health Science Center” in the first paragraph; by deleting “a” and substituting “an” in the first paragraph; and by deleting “Hearing Court” and substituting “Honor Court” in the second paragraph so that, as amended, the part reads:

2. College Honor Court. Each UT Health Science Center college has an Honor Court. Rules of membership, assembly, quorum, and voting are defined in each college’s addendum.

All proceedings of the college Honor Court hearing follow the procedures described in the Honor Code and in the respective college addendum. The college Honor Council president is responsible for administering the hearing, including selecting the date, appointing the Honor Court panel, notifying all parties, and recording and maintaining records of the college Honor Court hearings.

The selection and service of the college Honor Court members shall follow the guidelines and procedures stated in the respective college Honor Court addendum. Members of the panel shall be impartial and members who believe they cannot be impartial shall recuse themselves from serving on the panel. The accused student may request the removal of any panel member he/she thinks might not be impartial. Decisions for such removal will be made by the college Honor Court president.

Rule 1720-3-1-.02 Procedures and Hearing Options (3)(a)3 is amended by deleting “Memphis” and substituting “the Health Science Center” and by deleting “Vice Chancellor for Student Affairs” and substituting “Director of Student Life” so that, as amended, the part reads:

3. University Honor Court. The panel shall be composed of students from all colleges at the UT Health Science Center. Each college nominates two Honor Council members to the University Honor Court pool. The Director of Student Life will appoint seven (7) hearing panel members, from a pool of nominees, with at least two (2) panel members from the college of the accused. A chairperson will be selected from the panel and will be responsible for conducting the hearing. Members of the panel shall be impartial and members who believe they cannot be impartial shall recuse themselves from serving on the panel. The accused student may request the removal of any panel member he/she thinks might not be impartial. Decisions for such removal will be made by the Chairperson of the Hearing Court or by the Director of Student Life.

The Director of Student Life or designee will be responsible for making the appropriate arrangements and notifying all parties of the time, date and place of the hearing. The Director of Student Life or designee shall also be responsible for tape recording the hearings and maintaining the records of the University Honor Court hearings.

Rule 1720-3-1-.02 Procedures and Hearing Options (5)(a) is amended by deleting “Chancellor” and substituting “Vice President for Health Affairs” so that, as amended, the subparagraph reads:

- (a) The accused may appeal the action of the Dean by submitting an appeal, in writing, to the Vice President for Health Affairs within 10 days of receipt of the decision of the Dean. Where a charge is found to be true, the student charged has the burden of proving that the disciplinary action proposed is unreasonable.
  1. Any appeal to the Vice President for Health Affairs can be only for the penalty assigned by the Dean. The decision of the Honor Court can not be appealed to the Vice President for Health Affairs.

Rule 1720-3-1-.02 Procedures and Hearing Options (5)(b) is amended by deleting “Chancellor” and substituting “Vice President for Health Affairs” so that, as amended, the subparagraph reads:

- (b) The Vice President for Health Affairs, or designee, must respond with a decision within ten (10) University working days of the request for the appeal.

Rule 1720-3-1-.03 Procedures and Hearing Options (1)(e)3 is amended by deleting “Vice Chancellor for Student Affairs” and substituting “Director of Student Life” so that, as amended, the part reads:

3. Keeps adequate records of all hearings that result from alleged violations of the Honor Code and reports findings to the Director of Student Life.

Rule 1720-3-1-.03 Procedures and Hearing Options (2)(a) is amended by deleting “Vice Chancellor for Student Affairs” and substituting “Director of Student Life” so that, as amended, the subparagraph reads:

- (a) Information regarding the number of alleged Honor Code violations, hearings, and decisions resulting from these hearings must be kept by Honor Council presidents and reported to the Director of Student Life at the end of each academic term.

Rule 1720-3-1-.03 Procedures and Hearing Options (4)(a) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the subparagraph reads:

- (a) Each UT Health Science Center student, before matriculation, or during the new student orientation period, is required to sign the following pledge:

“I have read carefully the Honor Code of The University of Tennessee Health Science Center and fully understand its meaning, significance and application. I agree to abide by this Honor Code while a student in this institution and agree to accept all of its implications without reservation.”

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
College

Rule 1720-3-1-.04 Addendum (College Honor Councils) (1) is amended by adding “(including the School of Biomedical Engineering)” so that, as amended, the paragraph reads:

- (1) COLLEGE OF GRADUATE HEALTH SCIENCES HONOR COUNCIL  
(including the School of Biomedical Engineering)

Rule 1720-3-1-.04 Addendum (College Honor Councils) (1)(b) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the subparagraph reads:

- (b) Election of Members. The members of the Honor Council are selected according to the Constitution of the Student Government Association of the UT Health Science Center College of Graduate Health Sciences, Articles IV and V.

**Authority:** T.C.A. §49-9-301(e).

**HEALTH SCIENCE CENTER****1720-3-3  
STUDENT RIGHTS AND RESPONSIBILITIES****AMENDMENTS**

Rule 1720-3-3-.01 Introduction is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the rule reads:

**INTRODUCTION.** It shall be the responsibility of each member of the University of Tennessee Health Science Center community to become acquainted with the policies and rules governing that community. Any violation of these policies and rules will be subject to disciplinary action that shall be stated in a later section entitled, “Disciplinary Regulations and Procedures”.

Rule 1720-3-3-.02 Standards of Conduct (18) is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (18) Finder’s Fee: In order to maintain the highest ethical standards, to avoid any potential or perceived conflict of interest, and to protect its students and employees to the fullest extent possible. The University of Tennessee Health Science Center will not participate in and its employees and students are prohibited from participating in the payment of finder’s fees to medical residents, physicians, nurses, or other individuals or entities for the recruitment of patients as participants in clinical investigations involving human subjects.

Rule 1720-3-3-.03 Student Identification Cards (1) is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (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 Safety and Security. A replacement charge will be assessed.

Rule 1720-3-3-.04 Investigations of Student Conduct (5) is amended by deleting “Office of Student Affairs” and substituting “Office of Student Life” so that, as amended, the paragraph reads:

- (5) Resident Complaints: Should a resident believe that a University staff member has misused or abused his authority to inspect his room, the resident should file a complaint. The complaint may be filed orally or in writing with the Director of Housing and/or the Office of Student Life. The complaint will be investigated and appropriate action and response will be made.

Rule 1720-3-3-.05 Judicial Systems and Due Process (1) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (1) UT Health Science Center Hearing Procedures: 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 his request, be provided a hearing in accordance with the following procedures:



Rule 1720-3-3-.05 Judicial Systems and Due Process (1)(b) is amended by deleting “Memphis” and substituting “Health Science Center” and by deleting “Chancellor” and substituting “Vice President for Health Affairs” so that, as amended, the subparagraph reads:

- (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 Vice President for Health Affairs (or his 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 Vice President for Health Affairs upon the request of any party to a hearing.

Rule 1720-3-3-.05 Judicial Systems and Due Process (d) is amended by deleting “Chancellor” and substituting “Vice President for Health Affairs” so that, as amended, the subparagraph reads:

- (d) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Vice President for Health Affairs and the President.

Rule 1720-3-3-.05 Judicial Systems and Due Process (e)(5) is amended by deleting “Office of Student Affairs” and substituting “Office of Student Life” so that, as amended, the part reads:

- (5) Disciplinary Probation: Disciplinary probation means that a student is permitted to remain in the University on a probationary status. Should a violation of regulations occur during probation, the student is normally suspended. Disciplinary probation is recorded on the student’s personnel file in the Office of Student Life. 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.

**Authority:** *T.C.A. §49-9-301(e).*

(11-14)

## HEALTH SCIENCE CENTER

### 1720-3-4

## THE REGISTRATION AND CONDUCT OF STUDENT ORGANIZATIONS

### AMENDMENTS

Rule 1720-3-4-.02 Student Organization Registration (1)(c) is amended by deleting “Vice Chancellor of Student Affairs” and substituting “Associate Vice President for Administration” so that, as amended, the subparagraph reads:

- (c) The decision of the Office of Student Life may be appealed to the Associate Vice President for Administration.

Rule 1720-3-4-.02(1)(d) is amended by deleting “Vice Chancellor” and substituting “Associate Vice President for Administration” so that, as amended, the subparagraph reads:

- (d) The Associate Vice President for Administration will review the appeal and advise the Office of Student Life of his decision.

**Authority:** T.C.A. §49-9-301(e).

(11-15)

## HEALTH SCIENCE CENTER

### 1720-3-5

#### MAINTENANCE OF ETHICAL AND PROFESSIONAL STANDARDS

##### AMENDMENTS

Rule 1720-3-5-.01 Maintenance of Ethical and Professional Standards (1) is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (1) A student enrolled at The University of Tennessee Health Science Center is subject to disciplinary action up to and including suspension and dismissal for engaging in the following acts of misconduct, regardless of whether such misconduct is engaged in on or off University-owned or -controlled property:

Rule 1720-3-5-.01(2) is amended by deleting “, Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (2) A student applying for admission to The University of Tennessee Health Science Center shall also be subject to the above provisions and may be denied admission on the basis of his or her failure to maintain the aforementioned ethical and professional standards.

**Authority:** T.C.A. §49-9-301(e).

(11-16)

## HEALTH SCIENCE CENTER

### 1720-3-6

#### STUDENT HOUSING REGULATIONS

##### AMENDMENTS

Rule 1720-3-6-.04 Housing Contracts (3)(b) is amended by deleting the second and third sentence of the subparagraph so that, as amended, the subparagraph reads:

- (b) Current residents/End of term - A resident may cancel the upcoming portions of a contract by submitting a written notice of cancellation to the office of Student Housing 30 days before the end of any term. A resident who fails to check out at the end of the term may be held responsible for rent for the next term.

**Authority:** T.C.A. §49-9-301(e).

(11-17)

**HEALTH SCIENCE CENTER**  
**CHAPTER 1720-3-7**  
**TRAFFIC AND PARKING REGULATIONS**

**AMENDMENTS**

Rule 1720-3-7-.01(2) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (2) The University of Tennessee Health Science Center Parking Authority has established regulations in regard to traffic and parking activities on the UT Health Science Center campus. These regulations provide for the implementation, administration and enforcement through procedures developed by the Parking Services Offices. The regulations cover violations, penalties and appeals and are as follows:

Rule 1720-3-7-.02(1)(c)16 is amended by deleting the old language and adding new language so that, as amended, the part reads:

16. Breaking gate arm (plus cost of repairs or replacement).

Rule 1720-3-7-.03(1) is amended by deleting “a \$50.00” and substituting “an \$80.00” so that, as amended, the paragraph reads:

- (1) A parked vehicle may be impounded and an \$80.00 fee imposed:

Rule 1720-3-7-.04(1) is amended by deleting “Memphis” and substituting “Health Science Center” so that, as amended, the paragraph reads:

- (1) Citations which are to be appealed must be appealed in writing within fifteen (15) calendar days from the date of issue. Faculty, staff, and UT Health Science Center visitors appeal to: The Parking Appeals Hearing Panel, Parking Services, The University of Tennessee Health Science Center, TN 38163. Students appeal to: The Student Appeals Board, Room 309 Student/Alumni Center, Memphis, TN 38163. For each parking violation citation not paid within thirty (30) calendar days after the date of issue, or the date of denial of an appeal, whichever is later, a five dollar (\$5.00) late fee shall be assessed and added to the citation fine.

Rule 1720-3-7-.04(2) is amended by deleting “Chancellor” and substituting “Vice President for Health Affairs” so that, as amended, the paragraph reads:

- (2) Anyone claiming an impounded vehicle shall have the right to an immediate hearing by a neutral hearing examiner appointed by the Vice President for Health Affairs or his designee. The hearing examiner, after conducting a hearing, will direct either the release of the vehicle or payment of the appropriate charges as a condition for the release of the vehicle, depending on whether the findings, in the hearing examiner’s opinion, indicate that a violation occurred.

**Authority:** T.C.A. §49-9-301(e).

**THE UNIVERSITY OF TENNESSEE****1720-4-2****TYPES OF REGISTERED STUDENT ORGANIZATIONS****AMENDMENTS**

Rule 1720-4-2-.01(1) is amended by deleting “Knoxville” so that, as amended, the paragraph reads:

- (1) At UT, voluntary associations of students are an important part of the educational process. The University has a positive responsibility to encourage such associations as a means by which students can develop full civic and social awareness. In doing so it neither endorses nor disclaims any particular idea, system of thought or point of view. The ultimate testing place for all of these is not in any one office or council, but in the minds of responsible citizenry.

Rule 1720-4-2-.02 is amended by inserting “,” after “review” in paragraph (1) and by adding three additional categories of student organizations so that, as amended, the rule reads:

**1720-4-2-.02 CATEGORIES OF STUDENT ORGANIZATIONS**

- (1) General. With the exception of social fraternities and sororities, whose relationship with the institution requires a more detailed and exacting peer and administrative review, any group of students may seek to register as either a Continuing or Temporary Registered Student Organization.
- (2) Continuing Registered Student Organizations. Any group of at least 10 students meeting the requirements contained herein and whose purpose for existing is presumed to endure beyond a given academic semester is considered a Continuing Registered Student Organization.
- (3) Temporary Registered Student Organization. Any group of at least 10 students meeting the requirements contained herein and whose purpose for existing is presumed to be less than 90 days is considered to be a Temporary Registered Student Organization.
- (4) Student Political Parties. Any group of at least 10 students meeting the requirements contained herein and whose purpose for existing is presumed to endure through elections for Student Government only will be considered a Student Political Party.

Rule 1720-4-2-.03 is amended by deleting “Chancellor” and substituting “Provost” so that, as amended, the rule reads:

**1720-4-2-.03 SORORITIES AND FRATERNITIES.** Any group seeking to establish a social fraternal organization on campus must contact either the Interfraternity or Panhellenic Council for procedures and policies relative to this action. Registration is granted by the Provost on the recommendation of the Student Affairs staff. Withdrawal of registration of social fraternal organizations may be initiated by the University administration or the respective governing body with the final decision being the responsibility of the University administration. Social fraternities and sororities shall not be required to reveal their secret rituals provided these rituals do not conflict with local, state or federal law or with University regulations.

Rule 1720-4-2-.04(1) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the paragraph reads:

- (1) The Office of the Dean of Students shall utilize an Advisory Committee on Student Organizations in the procedural review of constitutions of proposed organizations. The ACSO may also formulate and recommend rules, regulations, and policies regarding registered student organizations .

Rule 1720-4-2-.04(3) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the paragraph reads:

- (3) Student members of the ACSO shall be appointed by the President of the Student Body with the approval of the Student Government Association. The Dean of Students will appoint a staff person to serve as committee secretary and liaison with the Office of the Dean of Students.

Rule 1720-4-2-.05(1) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the paragraph reads:

- (1) New organizations may register any time during the year except during the last two weeks of an academic term. To apply, an organization must complete the proper form provided by the Office of the Dean of Students and submit three copies of its constitution to the Office of the Dean of Students for review. Local chapters of regional or national organizations will be required to submit their local constitution and, in addition, any statements of their parent organization to which their local constitution refers or which determine local policy above and beyond that which is stated in local constitution. The local constitution must contain the following:

Rule 1720-4-2-.05(1)(a) is amended by deleting “, Knoxville” so that, as amended, the subparagraph reads:

- (a) The name of the organization. The phrase “The University of Tennessee” is regarded as a trademark and consequently cannot precede the name of a campus organization; however, the phrase may follow the name, e.g., Chess Club at The University of Tennessee.

Rule 1720-4-2-.05(1)(c) is amended by deleting “sex, handicap” from the second sentence and substituting “gender, disability, religion,” and by adding a third sentence so that, as amended, the subparagraph reads:

- (c) Membership eligibility requirements. Registered student organizations, including those affiliated with an extramural organization, shall be open to all students - unless the organization, by its nature, exists explicitly for a certain subgroup - in selecting its membership. There must be no discrimination with respect to race, gender, disability, religion or national origin. This statement must appear verbatim in organization constitutions.

Rule 1720-4-2-.05(1)(d) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the subparagraph reads:

- (d) Officers. A listing of the names and titles of all officers as well as the names of at least ten (10) petitioning members shall be submitted with the constitution. This information should be completed on a form provided by the Office of the Dean of Students. Officers must be full-time students, except for organizations where membership is composed of both faculty and student members and a faculty member may serve as an officer. To be eligible to serve as an officer of a registered student organization, a student must be in good academic standing at the time of his/her election or appointment and during his/her term of office. In addition, a student may be judged ineligible for the office if found guilty by a Student Disciplinary Board of a violation of Student Standards of Conduct. When an election is held in a registered student organization, the names of the new officers must be transmitted to the Office of the Dean of Students within one (1) week.

Rule 1720-4-2-.05(1)(h) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the subparagraph reads:

- (h) Provision for faculty advisor. All registered student organizations must choose one or more advisors, and a provision for this selection must be included in the constitution, but the name of the advisor(s) should not be listed. Except for local chapters of national social fraternities and sororities, which may have alumni advisors, the advisor shall be a full-time faculty member or administrative officer. In procuring an advisor, questions regarding faculty or administrative status should be referred to the Office of the Dean of Students. Advisors are responsible for being familiar with the constitution and purposes of the student organization they are advising and with University policies regarding student organizations. Advisors may counsel their organization in the exercise of responsibility, but they do not have the authority to control the policy of the organization. The officers of the organization are responsible for keeping their advisors aware of the policies and actions of their organization. Financial records must be available to the organization’s advisors at all times.

Rule 1720-4-2-.09(1) is amended by deleting “Dean of Students Office” and substituting “Office of the Dean of Students” so that, as amended, the paragraph reads:

- (1) An updated list of registered organizations is prepared each term by the Office of the Dean of Students. Organizations must complete the Information Form provided by the Office of the Dean of Students in order to be included on the official list.

Rule 1720-4-2-.10(3) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (3) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President.

Rule 1720-4-2-.11(1)(a) is amended by deleting “tide” and substituting “title” so that, as amended, the subparagraph reads:

- (a) Clearly indicated, either by the title of the organization or its constitution at the time of registration, or by specific statements in connection with any activities growing out of a later affiliation.

**Authority:** *T.C.A. §49-9-301(e).*

(11-19)

**THE UNIVERSITY OF TENNESSEE****1720-4-3****STUDENT RIGHTS AND RESPONSIBILITIES****AMENDMENTS**

Rule 1720-4-3-.05 Inspection and Search Policy (1)(b) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (b) Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from (1) Dean of Students, (2) the Vice Provost for Student Affairs, or (3) Designee of Dean of Students or Vice Provost for Student Affairs, unless in compliance with federal or state law.

Rule 1720-4-3-.05(1)(d)2 is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the part reads:

- 2. The Vice Provost for Student Affairs, or

Rule 1720-4-3-.08 The Hearing Boards (5)(c) is amended by deleting “Director of Student Conduct” and substituting “Director of Student Judicial Affairs” so that, as amended, the subparagraph reads:

- (c) Membership: During Spring Term, and at other times when vacancies arise, the Dean of Students shall call for applications for membership by placing an appropriate announcement in The Daily Beacon. Members or alternates selected must be juniors or above. The minimum overall grade point average required is 2.0 for undergraduates and law students and 3.0 for graduate students. Members and alternates will be selected by a screening committee composed of the Student Discipline Specialist, the Chairperson of the Tribunal, and the Director of Student Judicial Affairs, or their representatives. Because of the basic appellate name of this board, special consideration will be given to an applicant with a legal background or previous experience on a Student Disciplinary Board. No person may serve more than one academic year (not including summer school) unless he/she has been reappointed to the board by the screening committee (screening is not required for reappointment).

Rule 1720-4-3-.08 The Hearing Boards (6)(a) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (a) The Vice-Provost for Student Affairs, who serves as chairperson;

Rule 1720-4-3-.09 Penalties (3) is amended by deleting “Student Conduct” and substituting “Probation Services” so that, as amended, the paragraph reads:

- (3) Disciplinary Probation. Disciplinary Probation means that a student is permitted to remain in the University on a probationary status. Conviction of a similar violation during probation will result in suspension. Other conditions of probation are specific to the individual case and may include loss of eligibility to serve as a student organization officer or to participate in specified student activities. The Dean of Students and/or the Director of the Office of Probation Services, who is charged with the responsibility of supervising those on probation, may also specify the terms of probation.

Rule 1720-4-3-.10 Appeal and Scope of Review (2)(d) is amended by deleting “Chancellor, President and Board of Trustees of the University of Tennessee” and substituting “Provost and the President” so that, as amended, the subparagraph reads:

- (d) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President.

Rule 1720-4-3-.12 Student Academic Conduct (1) is amended by deleting “, Knoxville” so that, as amended, the paragraph reads:

- (1) Academic integrity is a responsibility of all members of the academic community. In a university as large and complex as The University of Tennessee, a system to monitor, supervise, and guarantee the essentials of academic integrity is necessary. To implement such a system an Academic Review Board has been created for each of the following academic units:

Rule 1720-4-3-.12 Student Academic Conduct (4)(c)2(ii)(II)II is amended by deleting “Chancellor” and substituting “Provost” so that, as amended, the subitem reads:

- II. Provost. Any other recommendations of the Student Affairs Council will be forwarded to the Provost for final adjudication (when a case involves a graduate student, it shall be forwarded to the Dean of the Graduate School and the Provost for final adjudication).

Rule 1720-4-3-.12 Student Academic Conduct (6) is amended by deleting “Chancellor” and substituting “Provost” and by deleting “, Knoxville” and by deleting the last “of The University of Tennessee” so that, as amended, the paragraph reads:

- (6) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President.

Rule 1720-4-3-.13 Emergency Powers is amended by deleting “Vice Chancellor” and substituting “Vice Provost” and by deleting “, Knoxville” so that, as amended, the rule reads:

**1720-4-3-.13 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 Provost 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.

Rule 1720-4-3-.15 Termination of Student Employees (3)is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the paragraph reads:

- (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 Provost 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 Provost. The Vice Provost 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.

Rule 1720-4-3-.15 Termination of Student Employees (4) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the paragraph reads:

- (4) **Request for 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 Provost having administrative responsibility for the employee.
    - 1. If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Provost shall forward the file to the Provost for the appointment of a hearing officer.
    - 2. If the employee elects a hearing under this policy statement, the Vice Provost 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 Provost to the Provost. No right to a hearing accompanies this right of appeal.

Rule 1720-4-3-.15 Termination of Student Employees (5)(b) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (b) Make findings of fact and recommendations to the appropriate Vice Provost;

Rule 1720-4-3-.15 Termination of Student Employees (5)(d) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (d) Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Provost.

Rule 1720-4-3-.15 Termination of Student Employees (6)(c) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (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 Provost must be notified by the employee at least three days prior to the scheduled hearing.

Rule 1720-4-3-.15 Termination of Student Employees (7) is amended by deleting “Vice Chancellor” and substituting “Vice Provost” and by deleting “Chancellor” and substituting “Provost” so that, as amended, the paragraph reads:

- (7) **Decision and Appeal:**
  - (a) **Hearing Committee.** The appropriate Vice Provost 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:

Officers, faculty and staff members, students, employees, alumni and all others who feel that they may have a grievance against the University shall have the right of appeal through the Provost to the President.

An employee's appeal must be submitted in writing to the Provost within ten working days after receipt of the decision.

- (b) Administrative Procedures Act. The decision of the Provost 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.

Rule 1720-4-3-.16 Termination of Financial Assistance (3)(a)2 is amended by deleting "assistance" and "(Article 3, Section 4(d))" so that, as amended, the part reads:

- 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.

Rule 1720-4-3-.16 Termination of Financial Assistance (3)(b)1 is amended by deleting "Vice Chancellor" and substituting "Vice Provost" so that, as amended, the part reads:

- 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 Provost for Academic Affairs to the Provost.

Rule 1720-4-3-.16 Termination of Financial Assistance (4)(a) is amended by deleting "Chancellor" and substituting "Provost" and by capitalizing the "A" in "aid" so that, as amended, the part reads:

- (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.

Rule 1720-4-3-.16 Termination of Financial Assistance (8)(a)1 is amended by deleting "Chancellor" and substituting "Provost" so that, as amended, the part reads:

- 1. Officers, faculty and staff members, students, employees, alumni and all others who feel that they may have a grievance against the University shall have the right of appeal through the Provost to the President.

Rule 1720-4-3-.16 Termination of Financial Assistance (8)(a)2 is amended by deleting "Chancellor" and substituting "Provost" so that, as amended, the part reads:

- 2. An appeal must be submitted in writing to the Provost within five (5) working days.

Rule 1720-4-3-.16 Termination of Financial Assistance (8)(b) is amended by deleting "Chancellor" and substituting "Provost" so that, as amended, the subparagraph reads:

- (b) Administrative Procedures Act. The decision of the Provost 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.

Rule 1720-4-3-.17 Withdrawal of Temporary Suspension due to Mental or Physical Problems (1)(a) is amended by deleting “Vice Chancellor for Administration and Student Affairs” and substituting “Vice Provost for Student Affairs” and by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (a) 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 Provost 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 Provost, 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 Provost.

Rule 1720-4-3-.17 Withdrawal of Temporary Suspension due to Mental or Physical Problems (1)(b) is amended by deleting “Vice Chancellor for Administration and Student Affairs” and substituting “Vice Provost for Student Affairs” and by deleting “Vice Chancellor” and substituting “Vice Provost” so that, as amended, the subparagraph reads:

- (b) 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 Provost 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.

*Authority:* T.C.A. §49-9-301(e).

(11-20)

## THE UNIVERSITY OF TENNESSEE

### 1720-4-5

## TRAFFIC AND PARKING REGULATIONS

### AMENDMENTS

Rule 1720-4-5-.01 General (1) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (1) These regulations are established by the Traffic and Parking Authority of The University of Tennessee as directed by resolution of The University of Tennessee Board of Trustees on June 20, 1968. They are applicable to all students, faculty, staff, and visitors on the Knoxville campus of The University of Tennessee. Students are required to obey these regulations as a condition of attendance at the University, and faculty and staff (hereinafter referred to as staff) members are required to obey them as a condition of employment.

Rule 1720-4-5-.01 General (3) is amended by deleting “UTK” and substituting “UT” and by deleting “Office” and substituting “Department” so that, as amended, the paragraph reads:

- (3) The UT Police Department is responsible for implementation and enforcement of these regulations. Records are maintained by the Parking Services Department, 974-6031.

Rule 1720-4-5-.01 General (4) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (4) The University shall have no responsibility for loss or damage to any vehicle or its contents operated or parked on the Knoxville campus of The University of Tennessee.

Rule 1720-4-5-.01 General is amended to add a new paragraph (5) to read:

- (5) Regulations are enforceable seven (7) days a week, twenty-four (24) hours a day, including holidays and breaks.

Rule 1720-4-5-.02 Registration of Vehicles is amended by deleting the current language and substituting new language so that, as amended, the rule reads:

**1720-4-5-.02 REGISTRATION OF VEHICLES.**

- (1) All motor vehicles operated by staff and students in connection with their employment or attendance at The University of Tennessee must be registered with the Parking Services Department. Registration alone does not confer any parking privileges at any time on campus. Registration improves the security of campus, identifies the operator as affiliated with the University and provides for more expedient notification in the event of an emergency. THERE WILL BE NO CHARGE FOR REGISTRATION.
- (2) Transferable registration hanging tags will be issued to staff and students registering their vehicles. To be valid, these tags must be clearly visible and hanging from the rear view mirror of the registrant's vehicle.
- (3) Registration tags are not parking permits and do not confer any parking privileges at any time on campus.
- (4) Parking at University Apartments requires a special registration tag that is to be obtained from the Resident Manager's Office of the Apartment Complex of Residency. This tag will authorize parking at a particular housing unit only. Parking in University lots on the Agriculture and Main Campuses will require the appropriate staff or student parking permit, which may be obtained at the Parking Services Department, University Center, Room 24, or 2121 Stephenson Drive.
- (5) Vehicle registration must be renewed at the beginning of each Fall Semester and is valid until the beginning of the following Fall Semester so long as the registrant remains a student or a University employee.
- (6) Staff vehicle registrations must be accomplished within 72 hours of joining the University Staff and within 72 hours of acquiring a vehicle. A temporary permit is required during this initial 72-hour period. Staff vehicle registration must be renewed each year at the beginning of the parking year (August 1 through July 31).
- (7) Student vehicle registration must be accomplished by the first day of class or within 72 hours of acquiring a vehicle. A temporary permit is required during this 72-hour period.
- (8) Lost or stolen registration tags (E tags, K tags) will be replaced without charge.
- (9) The person to whom a vehicle is registered is responsible for that vehicle and all violation citations issued thereto. If the person operating the vehicle is other than the registrant when a violation is committed, both he/she and the registrant may be cited.
- (10) Specific EXPIRATION DATES are indicated on each registration tag.

(11) Ownership of vehicle registration is not transferable.

Rule 1720-4-5-.03 Staff Space Allocation and Parking Assignment (2)(b) is amended by deleting “Office” and substituting “Department” so that, as amended, the subparagraph reads:

(b) Assignments will be made by the Parking Services Department in accordance with instructions from deans or directors.

Rule 1720-4-5-.03 Staff Space Allocation and Parking Assignment (2)(d) is amended by deleting “Office” and substituting “Department” so that, as amended, the subparagraph reads:

(d) Staff members will present to the Parking Services Department letters of authorization from deans or directors for area assignment.

Rule 1720-4-5-.05 Violations (1)(a)2 is amended by adding new language “or parking permit” so that, as amended, the part reads:

2. Altered or mutilated registration tag or parking permit

Rule 1720-4-5-.05 Violations (1)(a)3 is amended by adding new language “or parking permit” so that, as amended, the part reads:

3. Unauthorized possession of registration tag or parking permit.

Rule 1720-4-5-.05 Violations (1)(b) is amended by adding a new part II to read:

II. Unauthorized use of a Handicapped plate or placard.

Rule 1720-4-5-.06 Enforcement (1) is amended by deleting “Office” and substituting “Department” and by deleting “1411 White Avenue” and substituting “University Center, Room 24, or 2121 Stephenson Drive” so that, as amended, the paragraph reads:

(1) University violation citations must be answered in person or by mail at the Parking Services Department, University Center, Room 24, or 2121 Stephenson Drive, within fourteen (14) calendar days after issuance to avoid 50% penalty for late payment or forfeiture of right to appeal.

Rule 1720-4-5-.06 Enforcement (3) is amended by deleting “towed” and substituting “towed/booted” and by deleting “. Provided,” and substituting “provided” so that, as amended, the paragraph reads:

(e) Vehicles having a violation citation(s) which has not been satisfactorily disposed of by payment of assessed penalties/fees within the fourteen (14) calendar day period or by a successful appeal may be towed/booted whenever found parked on University property, provided the owner of such vehicle will first be notified in writing of

Rule 1720-4-5-.06 Enforcement (3)(c) is amended by deleting “tow” and substituting “tow/boot” so that, as amended, the subparagraph reads:

(c) The University’s intent to tow/boot such vehicle when it is next found on University property, whether parked legally or illegally.

Rule 1720-4-5-.06 Enforcement (4) is amended by deleting “firelane” and substituting “fire lane” and by deleting “impounded” and substituting “impounded/booted” and by deleting “which” and substituting “that” so that, as amended, the paragraph reads:

- (4) Vehicles parked in a fire lane, designated handicapped parking space, reserved parking space, or in such manner as to impede the flow of traffic or disrupt the orderly affairs of the University may be impounded/booted. Owners of vehicles impounded/booted for the above reasons have a right to a hearing that will be provided on request prior to the payment of penalties.

Rule 1720-4-5-.06 Enforcement (5) is amended by deleting “1411 White Avenue” and substituting “University Center, Room 24” so that, as amended, the paragraph reads:

- (5) Hearing will be provided at the Parking Services Office located at University Center, Room 24.

Rule 1720-4-5-.06 Enforcement (6) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (6) Impounded vehicles may be claimed at University Center, Room 24, M-F, 8:30 a.m.-4:30 p.m. After this time, vehicles may be claimed at UT Police Department, 1115 UT Drive. Impounded vehicles will be released only upon proper identification.

Rule 1720-4-5-.07 Penalties (1)(a) is amended by deleting the current language and substituting new language so that, as amended, the paragraph reads:

- (a) Registration violation \$27.00 (Except an ALTERED OR MUTILATED REGISTRATION TAG OR PARKING PERMIT violation, an UNAUTHORIZED POSSESSION OF REGISTRATION TAG OR PARKING PERMIT violation, and a FALSIFICATION OF REGISTRATION INFORMATION violation, the penalty for each of which is \$250.00)

Rule 1720-4-5-.07 Penalties (1)(b) is amended by deleting the current language and substituting new language so that, as amended, the subparagraph reads:

- (b) Parking violation \$12.00 (Except a FIRE LANE violation, which is \$42.00, and a HANDICAPPED OR RAMP violation and an UNAUTHORIZED USE OF A HANDICAPPED PLATE OR PLACARD violation, each of which is \$100.00)

Rule 1720-4-5-.07 Penalties (1)(d) is amended by deleting “Impounded” and substituting “Impounded/booted” so that, as amended, the subparagraph reads:

- (d) Impounded/booted vehicle \$42.00 (plus \$3.00 per day storage fee)

Rule 1720-4-5-.08 Appeals (2) is amended by deleting “Office” and substituting “Department” and by deleting “UTK” and substituting “UT” so that, as amended, the paragraph reads:

- (2) A written appeal, using the form supplied by the Parking Services Department, is the initial step in the appeals process. This must be done within fourteen (14) calendar days from the issuance of the citation or the right of appeal will be forfeited. Appeals must be made by the person cited or person to whom the vehicle is registered. Oral or written requests from other persons will not be accepted except to clarify that a person cited is not an active UT employee or student.

Rule 1720-4-5-.08 Appeals (4) is amended by deleting “1411 White Avenue” and substituting “University Center, Room 24” and by deleting “Office” and substituting “Department” so that, as amended, the paragraph reads:

- (4) A Staff Appeals Board meets as required at University Center, Room 24. A Student Appeals Board meets regularly during each semester at the same location. The Parking Services Department (974-6031) may be contacted for appeals information.

Rule 1720-4-5-.08 Appeals (6) is amended by deleting “UTK” and substituting “UT” and by deleting “impounded” and substituting “impounded/booted” and by deleting “impoundment” and substituting “impoundment/booting” so that, as amended, the paragraph reads:

- (6) A staff member or student who receives MORE THAN six (6) citations, paid or unpaid (but not including citations under appeal) in the same academic year may be required to forfeit his or her parking privilege for the remainder of that academic year. Such a violator will be scheduled to appear before an Appeals Board. The Board will make a recommendation to the UT-Traffic and Parking Authority about forfeiture of the parking privilege. A person who parks his or her car on campus after the parking permit has been forfeited may have the car impounded/booted until all citations are paid, including the impoundment/booting fee.

Rule 1720-4-5-.10 Special Occasions and Emergencies is amended by deleting “Office” and substituting “Department” so that, as amended, the rule reads:

**1720-4-5-.10 SPECIAL OCCASIONS AND EMERGENCIES.** On special occasions - for example: athletic events, concerts, graduation exercises, etc., and in emergencies - parking and traffic limitations may be imposed by UT Police or the Parking Services Department as required by the conditions which prevail.

**Authority:** T.C.A. §49-9-301(e).

(11-21)

## THE UNIVERSITY OF TENNESSEE

### 1720-4-9

### CODE OF ACADEMIC CONDUCT - COLLEGE OF LAW

#### AMENDMENTS

Rule 1720-4-9-.05 Administration of the Code (3)(p) is amended by deleting “Chancellor” and substituting “Provost” so that, as amended, the paragraph reads:

- (p) The decision of the Student Affairs Council is subject to review by the Provost and the President of The University of Tennessee.

Rule 1720-4-9-.05 Administration of the Code (4)(1)2(ii) is amended by deleting “Chancellor” and substituting “Provost” so that, as amended, the subpart reads:

- (ii) Any other recommendation of the Student Affairs Council will be forwarded to the Provost for final adjudication.

Rule 1720-4-9-.05 Administration of the Code (4)(m) is amended by deleting “Chancellor” and substituting “Provost” so that, as amended, the paragraph reads:

- (m) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President of the University of Tennessee.

**Authority:** *T.C.A. §49-9-301(e).*

*(11-22)*

The proposed rules set out herein were properly filed in the Department of State on the 17th day of November, 2000 and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of March, 2001.



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## **PUBLIC NECESSITY RULES**

### **PUBLIC NECESSITY RULES NOW IN EFFECT**

- 0400 - Department of Environment and Conservation, Division of Water Pollution Control, Public necessity rules implementing Section 8 of the Inter-Basin Water Transfer Act, , Chapter 1200-4-13, Inter-Basin Water Transfers, 10 T.A.R. (October 2000) - Filed September 29, 2000; effective through March 13, 2001. (09-29)
  
- 0940 - Department of Mental Health and Developmental Disabilities, Office of the Commissioner, Public necessity rules dealing with the Abuse Registry, cChapter 0940-1-4 Reporting to Statewide Abuse Registry of Suspected Client Abuse, Neglect, Mistreatment 10 T.A.R. (October 2000) - Filed September 21, 2000; effective through March 5, 2001. (09-20)

**DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620**

**BUREAU OF TENNCARE**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

I am herewith submitting proposed amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare for promulgation under the provisions of the Uniform Administrative Procedures Act and Tennessee Code Annotated 71-5-134.

On July 31, 2000, the United States District Court for the Middle District of Tennessee entered a modified Revised Consent Decree in the case Grier v. Wadley, a class action lawsuit involving TennCare Appeals. The class action lawsuit was brought to adequately protect the due process rights of individuals who are, or will be enrolled as beneficiaries in TennCare, Tennessee's Medicaid Managed Care program.

All provisions of the Revised Consent Decree are effective as of November 1, 2000. In the absence of public necessity rules, the Department will not be able to satisfy its time-sensitive obligations as set out in the Revised Consent Decree. To fulfill the requirements of court orders, the Department is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated Section 4-5-209(a)(2).

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0145.

Mark E. Reynolds  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration

**PUBLIC NECESSITY RULES  
OF**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION**

**BUREAU OF TENNCARE**

**CHAPTER 1200-13-12**

**AMENDMENTS**

Rule 1200-13-12-.11 Appeal of Adverse Actions Affecting a TennCare Program Enrollee is deleted in its entirety and replaced with a new rule 1200-13-12-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits which shall read as follows:

**1200-13-12-.11 APPEAL OF ADVERSE ACTIONS AFFECTING TENNCARE SERVICES OR BENEFITS**

- (1) Definitions. For the purpose of this rule, the following definitions apply:

- (a) Administrative Hearing - a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer who renders an initial order under Tenn. Code Ann. § 4-5-314. If an enrollee appeals the initial order under Tenn. Code Ann. § 4-5-315, the Commissioner may render a final order.
- (b) Adverse Action Affecting TennCare Services or Benefits - includes, but is not limited to, delay, denial, reduction, suspension or termination of TennCare benefits, as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits.
- (c) Commissioner - the chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located, or the Commissioner's designee.
- (d) Continuation or Reinstatement of Services – the following services or benefits are subject to continuation or reinstatement pursuant to paragraph (5)(g) of this rule:
  - 1. Those services currently or most recently provided to an enrollee; or
  - 2. Those services being provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
  - 3. Those services being provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
  - 4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
  - 5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.
- (e) Covered Services - the services and benefits that:
  - 1. TennCare MCOs or BHOs are required to cover, as set out in section 1200-13-12-.04 of the rules of the Bureau of TennCare; or
  - 2. In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1315 of the Social Security Act, the services and benefits that are required to be covered under the terms and conditions of such waivers.
- (f) Delay - includes, but is not limited to:
  - 1. Any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal;
  - 2. An MCC's failure to provide timely prior authorization of a TennCare service. In no event shall a prior authorization decision be deemed timely unless it is granted within twenty-one (21) calendar days of a request for such authorization, and a shorter period is required if a more prompt response is medically necessary in light of the enrollee's condition and the urgency of his need, as defined by a prudent lay person.

- (g) Enrollee - as used in this rule, an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act. As concerns MCC compliance with this section, the term only applies to those individuals for whom the MCC has received at least one day's prior written or electronic notice from the TennCare Bureau of the individual's assignment to the MCC.
- (h) Impartial Hearing Officer - as used in this rule, an Administrative Judge or Hearing Officer who is not an employee, agent or representative of the MCC and who did not participate in, nor was consulted about, any TennCare Bureau review prior to the Administrative Hearing.
- (i) MCC - a managed care contractor which has signed a TennCare Contractor's agreement with the State of Tennessee and which operates provider networks. An MCC may be a managed care organization (MCO), behavioral health organization (BHO), pharmacy benefits manager (PBM), dental benefits manager, or state government agency.
- (j) MCC - Initiated Reduction, Termination or Suspension of Medical Assistance - as used in this rule, a decision by an enrollee's MCC to reduce, terminate or suspend TennCare services which is contrary to an order of the enrollee's treating clinician.
- (k) Medical Assistance - health care, services and supplies furnished to an enrollee and funded in whole or in part under Title XIX of the Social Security act, 42 U.S.C. §§ 1396, et seq. and Tenn. Code Ann. § 71-5-101, et seq. Medical assistance includes the payment of the cost of care, services, drugs and supplies. Such care, services, drugs, and supplies shall include services of qualified providers who have contracted or otherwise agreed with an MCC to provide services to TennCare enrollees.
- (l) Medically Contraindicated - as used in this rule, a TennCare benefit or service which it is necessary to withhold in order to safeguard the health or safety of the enrollee.
- (m) Provider - a health care provider eligible by professional qualifications to participate in the TennCare Program and who is acting within his scope of practice.
- (n) Provider with Prescribing Authority - in the context of TennCare pharmacy services, a health care professional authorized by law or regulation to order prescription medications for her patients, and who:
  - 1. Participates in the provider network of the MCC in which the enrollee is enrolled; or
  - 2. Has received a referral of the enrollee, approved by the MCC, authorizing her to treat the enrollee; or
  - 3. In the case of a TennCare enrollee who is also enrolled in Medicare, is authorized to treat Medicare patients.
- (o) Prudent Lay Person - a reasonable individual who possess an average knowledge of health and medicine.
- (p) Readable - no more than a sixth grade level of reading proficiency is needed to understand notices or other written communications, as measured by the Fogg index, the Flesch Index, the Flesch-Kincaid Index, or other recognized readability instrument. The template notices approved by the U.S. District Court following entry of the Grier v. Wadley Revised Consent Decree are readable.
- (q) Receipt of Mailed Notice - Receipt of any notice contemplated by this rule, unless otherwise specified in the rule, shall be presumed to be within five (5) calendar days of the date of mailing.

- (r) Reconsideration - the process by which an MCC reviews and renders a decision regarding an enrollee's appeal of the MCC's adverse action affecting TennCare benefits.
  - (s) Reduction, Suspension or Termination - termination, suspension, or reduction in amount, scope, and duration of a TennCare covered service, or other acts or omissions on the part of an MCC which results in the interruption of a course of necessary clinical treatment for a continuing spell of illness or medical condition.
  - (t) TennCare Appeal Form - the TennCare form(s) which are completed by an enrollee, or by a person authorized by the enrollee to do so, whenever an enrollee appeals an adverse action affecting TennCare services. The use of the form is not required, but is encouraged to ensure the MCC and TennCare Bureau have the necessary information.
  - (u) TennCare Services or TennCare Benefits - any medical assistance that is administered by the Bureau of TennCare or its contractors and which is funded wholly or in part with federal funds under the Medicaid Act or any waiver thereof, but excluding:
    - 1. Medical assistance that can be appealed through an appeal of a pre-admission evaluation (PAE) determination; and
    - 2. Medicare cost sharing services that do not involve utilization review by the Bureau of TennCare or its contractors.
  - (v) TennCare Bureau ("TennCare") - the administrative unit of the state Department which is responsible for the administration of the TennCare Program.
  - (w) TennCare Program - the joint federal/state medical assistance program administered pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq. (hereinafter "Medicaid Act"), including Tennessee' Medicaid Demonstration Project Number 11-C-99638/4-03 called "TennCare."
  - (x) Time – Sensitive Care - care which requires a prompt medical response in light of the enrollee's condition and the urgency of her need as defined by a prudent lay person; provided, however, that a case may be treated as non-time-sensitive upon the written certification of the enrollee's treating physician or clinician.
  - (y) Treating Clinician - a health care provider who has provided diagnostic or treatment services for an enrollee, for purposes of treating, or supporting the treatment of, a known or suspected medical condition. The term excludes providers who have evaluated an enrollee's medical condition primarily or exclusively for the purposes of supporting or participating in a decision regarding TennCare coverage.
- (2) Notice Requirements
- (a) When Written Notice is Required
    - 1. A written notice shall be given to an enrollee by his/her MCC of any adverse action taken by the MCC to deny, reduce, suspend, or terminate medical assistance.
    - 2. A written notice shall be given to an enrollee whenever his/her MCC has reason to expect that covered medical assistance for the enrollee will be delayed beyond the time lines prescribed by the TennCare contract or the terms and conditions of the TennCare waiver. Actions which can reasonably be anticipated to delay or disrupt access to medical assistance include:

- (i) Change of primary care provider;
  - (ii) Pharmacy “lock-in”;
  - (iii) Decisions affecting the designation of a person as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED);
  - (iv) Termination of a provider’s contract, by either party to the contract; or
  - (v) Inability to provide an adequate provider network.
3. A written notice shall be given to an enrollee when he/she has been prescribed a covered service on an on-going basis or with no specific ending date and the service is subject to a prior authorization requirement.
  4. A written notice shall be given to an enrollee of any MCC-initiated reduction, termination or suspension of inpatient hospital care.
  5. A written notice shall be given to an enrollee of any provider-initiated reduction, termination or suspension of:
    - (i) Any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child;
    - (ii) Any inpatient psychiatric or residential service;
    - (iii) Any service being provided to treat a patient’s chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available; or
    - (iv) Home health services.

When a provider proposes to reduce, terminate or suspend one of the above services, the provider shall promptly notify the enrollee’s MCC of the proposed action and recommended discharge plan, if any, to insure compliance with this rule.

(b) Timing of Written Notice

1. Written notice of MCC-initiated reduction, termination or suspension of medical assistance must be provided to an enrollee within the time frames required by 42 C.F.R. §§431.210-.214 (usually ten (10) days in advance). However, in instances of MCC-initiated reduction, termination or suspension of inpatient hospital treatment, the notice must be provided to an enrollee at least two business days in advance of the proposed action. Where applicable, the exceptions set out at 42 C.F.R. § 431.211-.214 permit or require reduction of the time frames within which advance notice must be provided.
2. Written notice of an MCC’s decision in response to a request by or on behalf of an enrollee for medical or related services must be provided within twenty-one (21) calendar days of receipt of the request; however, a shorter period is required if a more prompt response is medically necessary in light of the enrollee’s condition and the urgency of his/her need, as defined by a prudent lay person.
3. Written notice of delay of covered medical assistance must be provided to an enrollee immediately upon an MCC’s receipt of information leading it to expect that such delay will occur.

4. Written notice of expiration of a prior authorization for a covered service which has been prescribed on an on-going basis or with no specific ending date must be provided to an enrollee no more than forty (40) days, nor less than thirty (30) days, prior to the expiration of the prior authorization. However, in the event that the period of authorization is less than thirty (30) days, the notice shall be issued upon authorization.
5. Where required by paragraph (2)(a)5. of this rule, written notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee at least two (2) business days in advance of the proposed action.
6. Written notice is deemed to be provided to an enrollee upon deposit with the U.S. Postal Service or other commercial mail carrier, or upon hand-delivery to an enrollee or his/her representative.

(c) Notice Contents

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance, the notice must contain the following elements, written in concise, readable terms:
  - (i) The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services.
  - (ii) A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision, the statement of reasons shall:
    - (I) Identify by name those clinicians who were consulted in reaching the decision at issue;
    - (II) Identify specifically those medical records upon which those clinicians relied in reaching their decision; and
    - (III) Specify what part(s) of the criteria for medical necessity or coverage was not met.
  - (iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.
  - (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of urgent care and, in the case of termination, reduction or suspension of on-going services, the right to continuation of services pending appeal; and
  - (v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.
2. **Binding Effect of Original Notice.** TennCare and the MCCs shall be bound by their own notices, and may not rely upon any reasons or legal authorities other than those which they include in their written notices to a TennCare enrollee. In the event that an enrollee appeals an adverse action, the reviewing



authority shall consider only the factual reasons and legal authorities cited in the original notice to the enrollee, except that additional evidence beneficial to the enrollee may be considered on appeal.

3. **Insufficient Legal Authority in Notice.** TennCare and the MCCs may not cite or rely upon policies that are inconsistent with federal law, the TennCare waiver, properly promulgated rules or contract provisions. If the MCC's reasons or legal authorities are not sufficient to support the proposed adverse action, the proposed action must be overruled and the disputed service must be provided. While this does not preclude the issuance of a new notice that may provide the predicate for subsequent adverse action, the new notice shall not cure the deficiencies in the original notice.

(d) **Special Provisions Pertaining to Pharmacy Notice.**

1. If the service at issue is a prescription drug, and the enrollee does not receive the medication of the type and amount prescribed, a written notice shall be provided by the pharmacy to inform the enrollee of:
  - (i) The circumstances under which the enrollee may obtain a two week supply of the prescribed medicine and how to do so;
  - (ii) The enrollee's right to appeal the denial or termination of the medication and how to do so; and
  - (iii) The right to request continuation of services pending appeal.
2. In the event that the enrollee appeals a denial or termination of a pharmacy benefit and the appeal is not resolved to the enrollee's satisfaction within ten (10) days from the date of receipt of the appeal, the MCC shall issue a notice containing the information described in paragraph (2)(c) above.

(e) **Notice of Rights.** The Bureau of TennCare shall provide annual notice to TennCare enrollees of their notice and appeal rights established by this rule, including enrollees' recourse when billed by a provider for TennCare covered services. Additionally, upon enrollment in an MCC, the MCC shall give the enrollee a plain language explanation of appeal rights.

(f) Proper use of the approved template notices designated by the Grier v. Wadley Revised Consent Decree shall be deemed to satisfy the notice requirements specified by this rule.

(g) **Violation of Notice Requirements and Corrective Action**

1. No adverse action affecting TennCare services shall be effective unless the notice requirements of the federal regulations (42 C.F.R. § 431.210-.214), as enhanced or otherwise modified herein, have been complied with. TennCare shall not withhold, or permit others acting on its behalf to withhold, any TennCare services in violation of this requirement.
2. Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule, TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.
3. In the event that the enrollee lacks a prescription for the covered TennCare service which has been delayed, denied, reduced, suspended or terminated in violation of notice requirements, the following shall occur:

- (i) The enrollee will be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed;
    - (ii) The provider will be informed that the service will be authorized if prescribed; and
    - (iii) Entitlement to the service will not be controlled by the MCC's utilization review process.
  - 4. In the event that the notice violation has occurred with regard to a delay of access to a physician to secure the requested medical assistance, such access shall be provided as soon as practicable. The enrollee shall be entitled to continue to receive such service until such time as the MCC takes those actions required by federal regulations and this rule as a prerequisite to taking any adverse action affecting TennCare services.
- (3) Appeal Rights of Enrollees. Enrollees have the following rights:
- (a) To appeal adverse actions affecting TennCare services.
  - (b) To have oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions that have been taken or are proposed to be taken, treated as appeals, including instances in which:
    - 1. The enrollee lacks an order or prescription from a provider supporting the appeal;
    - 2. TennCare or an MCC has agreed to cover a prescribed service in an amount that is less than the amount or duration sought by the enrollee;
    - 3. TennCare or an MCC has agreed to provide a covered service that is different from that sought by the enrollee;
    - 4. An enrollee seeks to contest a delay or denial of care resulting from the MCC's failure or refusal to make a needed service available, due to the inadequacy of the MCC's provider network;
    - 5. An enrollee seeks to contest a denial of his right under the TennCare waiver to choose his own primary care provider (PCP) from among a panel offered by the MCC, or seeks to contest a delay or denial of care resulting from the involuntary assignment of a PCP;
    - 6. An enrollee seeks to contest or change his assignment to a particular MCO or BHO;
    - 7. An enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue; and
    - 8. An enrollee seeks to contest a decision granting or withholding designation as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED).
  - (c) Have the appeal rights that are prescribed by 42 C.F.R. Part 431, Subpart E and Tenn. Code Ann. §§ 4-5-301, et seq.
  - (d) Be allowed thirty (30) days from receipt of written notice or, if no notice is provided, from the time the enrollee becomes aware of an adverse action, to appeal any adverse action affecting TennCare services.

- (e) To appeal in person, by telephone or in writing. Reasonable accommodations shall be made for persons with disabilities who require assistance with their appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county Department of Human Services or Health Department offices shall be stamped, and immediately forwarded to the TennCare Bureau for processing and entry in the central registry;
  - (f) To file an appeal through a toll-free phone number on a twenty-four (24) hours a day, seven (7) days a week basis. Resolution of appeals outside of regular business hours will be available only in cases of emergency medical condition.
  - (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R. §§ 431.230-.231 as adapted by this rule, pending appeal when they submit a timely appeal and request for such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:
    - 1. An MCC's failure to inform an enrollee of the availability of such continued services;
    - 2. An MCC's failure to reimburse providers for delivering services pending appeal; or
    - 3. An MCC's failure to provide such services when timely requested.
  - (h) The right to an impartial appeals process. But for initial reconsideration by an MCC as permitted by this rule, no person who is an employee, agent or representative of an MCC may participate in deciding the outcome of a TennCare appeal. No state official may participate in deciding the outcome of an enrollee's appeal who was directly involved in the initial determination of the action in question.
- (4) Special Provisions Relating to Appeals
- (a) Individualized Decisions Required. Neither the TennCare program nor its MCCs may employ utilization control guidelines or other quantitative coverage limits, whether explicit or de facto, unless supported by an individualized determination of medical necessity based upon the needs of each TennCare enrollee and his or her medical history.
  - (b) Decisions to be Supported by Substantial and Material Evidence. Throughout all stages of an appeal of an adverse action affecting TennCare services, decisions shall be based upon substantial and material evidence. In cases involving clinical judgments, this requirement means that:
    - 1. Appeal decision must be supported by medical evidence, and it is the MCCs' and TennCare's responsibility to elicit from enrollees and their treating providers all pertinent medical records that support an appeal; and
    - 2. The decisions or opinions of an enrollee's treating physician or other prescribing clinician shall not be overruled by either the MCC initially or TennCare upon review, unless there is substantial and material medical evidence, documented in the enrollee's medical records, to justify such action. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse action affecting TennCare services.
  - (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an adverse action affecting TennCare services, TennCare is responsible for obtaining from the MCC any and all records or

documents pertaining to the MCC's decision to take the contested action. TennCare shall correct any violation of this rule that is evident from a review of those records.

(5) Hearing Rights of Enrollees

- (a) TennCare shall inform enrollees that they have the right to an in-person hearing, a telephone hearing or other hearing accommodation as may be required for enrollees with disabilities;
- (b) Enrollees shall be entitled to a hearing before an impartial hearing officer that affords enrollees the right to:
  - 1. Representation at the hearing by anyone of their choice, including a lawyer;
  - 2. Review information and facts relied on for the decisions by the MCC and the TennCare Bureau before the hearing;
  - 3. Cross-examine adverse witnesses;
  - 4. Present evidence, including the right to compel attendance of witnesses at hearings;
  - 5. Review and present information from their medical records;
  - 6. Present evidence at the hearing challenging the adverse decision by his/her MCC;
  - 7. Ask for an independent medical opinion, at no expense to the enrollee;
  - 8. Continue or reinstate ongoing services pending a hearing decision, as specified in this rule;
  - 9. A written decision setting out the impartial hearing officer's rulings on findings of fact and conclusions of law; and
  - 10. An initial hearing decision (initial order) by the impartial hearing officer within ninety (90) days, or thirty-one (31) days in the case of a time-sensitive appeal, of the date of receipt of the appeal.
- (c) TennCare shall not impair the ability of an enrollee to appeal an adverse hearing decision by requiring that the enrollee bear the expense of purchasing a hearing transcript when such purchase would be a financial hardship for the enrollee.
- (d) Parties to an Appeal. Under this rule, the parties to an administrative hearing are limited to those permitted by federal regulations. The purpose of the hearing is to focus on the enrollee's medical needs. MCCs are not permitted to intervene or participate as parties in an enrollee's hearing. However, MCC employees may participate as witnesses in hearings. Further, nothing in this provision bars participation by an MCC in any informal resolution phase of the appeal process prior to a hearing before the impartial hearing officer.
- (e) Consistent with the Code of Judicial Conduct, impartial hearing officers shall assist pro se enrollees in developing the factual record; they shall have authority to order second medical opinions at no expense to the enrollee.
- (f) Review of Hearing Decisions/Binding Effect of Decisions in Favor of Enrollees.

1. Review of impartial hearing officers' decisions shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, et seq.
2. If the enrollee prevails at any stage of the appeal process, the decision is binding upon TennCare and the MCC. If the enrollee prevails by decision of an impartial hearing officer, the services shall be provided, and neither TennCare nor the MCC shall appeal.
3. An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals. To seek relief from the decision, TennCare may apply to federal court or enact rules and regulations, including emergency or public necessity rules, in accordance with the state Administrative Procedures Act.

(g) Continuation or Reinstatement of TennCare Services

1. Except as permitted under 42 C.F.R. §§ 431.213, 431.214 and 431.220, as modified by this rule, TennCare services shall continue (or be reinstated) until an initial hearing decision if the enrollee appeals and requests:
  - (i) Continuation of services within two (2) business days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce ongoing inpatient hospital treatment,
  - (ii) Continuation of services within two (2) business days of the receipt of provider-initiated notice of action to terminate, suspend or reduce any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child, any inpatient psychiatric or residential service, any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available, or home health services; or
  - (iii) Continuation of services within ten (10) days of the receipt of the MCC-initiated notice of action to terminate, suspend or reduce other ongoing services; or
  - (iv) Reinstatement of the services described in paragraph (5)(g)1.(iii) above within thirty (30) days of the receipt of the notice of action.
2. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (5)(g)1.(ii) above, the enrollee shall be afforded access to a written second medical opinion from a qualified provider who participates in the MCC's network. If there has not already been a break in receipt of the services, the benefits shall continue until receipt of the written second medical opinion. Services shall continue (or be reinstated) thereafter pending appeal only if and to the extent prescribed by the second provider.
3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (5)(g)1.(i) and (iii) above, the services shall continue (or be reinstated) pending appeal only if and to the extent prescribed by the enrollee's treating clinician.
4. Services shall not continue, but may be immediately reduced, terminated, or suspended if they are determined medically contraindicated under paragraph (9) below.
5. Appeals involving continuation of ongoing services determined by TennCare as not medically necessary shall be handled as expedited appeals. Expedited appeals must be concluded within thirty-one (31) days, and such time frame may not be delayed except as ordered by the impartial hearing officer.

Therefore, if an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed services pending a decision if:

- (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
  - (ii) The enrollee lacks a compelling justification for the requested delay; and
  - (iii) The enrollee received at least three weeks notice of the hearing, in the case of a standard appeal, or at least one week's notice, in the case of an expedited appeal.
- (h) Expedited appeal. Expedited appeal of any action involving time-sensitive care must be available to enrollees as follows:
- 1. The enrollee, the enrollee's parent, legal guardian or representative, or the enrollee's primary care provider or treating specialist asserts that the care in question requires a prompt medical response in light of the enrollee's condition and the urgency of the enrollee's needs as defined by a prudent lay person.
  - 2. Care is not time-sensitive, and an appeal is not expedited, if the enrollee's treating physician or clinician certifies in writing that the matter is not time-sensitive.
  - 3. An expedited appeal shall be resolved by hearing and a written hearing decision (initial order) within thirty-one (31) days from the date the appeal is received.
- (6) Special Provisions Pertaining to Pharmacy
- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
    - 1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization; or
    - 2. The drug as prescribed, if the prescribing provider has obtained prior authorization or established the medical necessity of the medication; or
    - 3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
    - 4. A two week supply of the prescribed drug, if the pharmacist is unable when the enrollee presents the prescription to be filled, to obtain MCC authorization to substitute an alternative medication. If the enrollee does not receive the medication of the type and amount prescribed, TennCare or the MCC shall immediately provide written notice of the right to appeal, including the right to request continuation of services pending appeal. The enrollee's entitlement to receive a two (2) week supply of the prescribed drug is subject to the provisions of paragraph (6)(b) below.
  - (b) The enrollee is entitled to a two (2) week supply of the prescribed drug, as mandated by the preceding paragraph, provided that:

1. The medication is not classified by the FDA as less than effective (i.e. a DESI, LTE or IRS drug); or
  2. The medication is not a drug in a non-covered TennCare therapeutic category (e.g., appetite suppressants, drugs to treat infertility); or
  3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
  4. If the prescription is for a total quantity less than a two (2) week supply, the pharmacist must provide a supply up to the amount prescribed.
- (c) In some circumstances, it is not feasible for the pharmacist to dispense a two (2) week supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a two (2) week supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a two (2) week supply, it is the responsibility of the MCC to provide coverage for either the two week supply or the usual dispensing amount, whichever is greater.
- (d) If the enrollee does not receive the medication of the type and amount prescribed, written notice must be issued by the pharmacy, in accordance with paragraph (2)(d) above.
- (7) Release of Enrollees' Medical Records
- (a) When a request is made, by or on behalf of a TennCare enrollee, for approval of a TennCare service or for an appeal of an adverse action affecting TennCare services, the enrollee is deemed to have consented to release of his/her relevant medical records to his/her MCC and the TennCare Bureau for the purposes of acting upon the enrollee's request.
  - (b) Providers shall promptly provide copies of an enrollee's medical records to the enrollee's MCC(s) and to the TennCare Bureau upon being informed by the MCC(s) or TennCare Bureau that the records have been requested for the purpose of acting upon an enrollee's request for approval of a TennCare service or an enrollee's appeal of an adverse action affecting TennCare services.
  - (c) An enrollee's consent to release of his/her medical records may be evidenced by his signature (or his provider's or authorized representative's signature) upon the enrollee's initial application for TennCare, upon his TennCare appeal form or other written request for authorization or appeal, or, in the event of an appeal by telephone, by a TennCare Bureau employee's signing of an appeal form on behalf of an enrollee with documentation of consent to do so.
  - (d) The medical records obtained by MCCs and the TennCare Bureau under this rule remain confidential. MCCs and the TennCare Bureau may use and disclose the records only as necessary in their consideration of the enrollee's request for approval of a TennCare service or the enrollee's appeal of an adverse action affecting TennCare services.
- (8) Time Requirements and Corrective Action

- (a) Subject to the provisions of subparagraphs (8)(e) and (f) below and to provisions relating to medical contraindication (paragraph (9)), the failure of an MCC to act upon a request for prior approval within twenty-one (21) days shall result in automatic authorization of the requested service.
- (b) The failure of an MCC to complete reconsideration of enrollee appeals within fourteen (14) days of notification by TennCare, in the case of a standard appeal, or within five (5) days in the case of expedited appeals involving time-sensitive care, shall result in immediate resolution of the appeal in favor of the enrollee, without further consideration or proceedings, subject to the provisions of subparagraphs (8)(e) and (f) below and to provisions relating to medical contraindication (paragraph (9)).
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals shall be resolved within thirty-one (31) days of receipt of the request for appeal. Calculation of the ninety (90) day or thirty-one (31) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if she received less than three (3) week's notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal. An enrollee may only be charged with the amount of delay occasioned by her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.
- (d) Failure to meet the 90 day or 31 day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (8)(e) and (f) below, and to provisions relating to medical contraindication (paragraph (9)). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, she shall not be liable for the cost of services provided past the deadline for resolution of the appeal.
- (e) When, under the provisions of subparagraphs (8)(a), (b) or (d) above, a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
  - 1. Is subject to an exclusion that has been reviewed and approved by the federal Health Care Financing Administration and incorporated into a properly promulgated state regulation, or
  - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
- (f) In the event that the enrollee lacks a prescription for a covered TennCare service, the enrollee shall be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed. The provider will be informed that the service will be authorized if prescribed. Entitlement to the service will not be controlled by an MCC's utilization review process.
- (g) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC must complete corrective action to implement the decision. Corrective action to implement the decision includes:



1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
  2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
  3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.
- (9) Medical Contraindication.
- (a) Whenever the terms of this rule require the provision of TennCare benefits or services to an enrollee, such obligation shall be relieved upon the written certification of a provider who is familiar with the beneficiary's medical condition that the TennCare benefit or service in question is medically contraindicated. The provider must either be employed by the state or, if a licensed pharmacist determining contraindication with regard to a prescribed drug, must be making such determination consistent with pre-established standards and procedures approved by the state.
  - (b) If a TennCare service is determined to be medically contraindicated as set out above, written notice must be immediately provided to the enrollee, and the notice must be accompanied by the provider's certification that the service must be withheld in order to protect the enrollee's health or safety. A copy of the notice and provider certification must be forwarded to the Tennessee Justice Center.
- (10) Special Provisions Relating to Children in State Custody. In addition to the rights and protections established by 42 C.F.R. Part 431, Subpart E and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights:
- (a) The Tennessee Department of Children's Services (DCS) must provide notice of any delay in providing a TennCare service that is administered by DCS. Such delay is immediately appealable on that child's behalf and cannot be required to last a particular length of time before issuance of the notice or processing of an appeal.
  - (b) Whenever there is an adverse action affecting TennCare services (regardless of which contractor or government agency is administering such services), timely notices required by this rule must be sent to the individuals specified in the DCS implementation plan which was approved by the Court in *Grier v. Wadley*. In the case of services administered by MCCs other than DCS, the responsible MCC shall provide notice to DCS, which shall ensure that timely notice is provided to the required individuals. Delivery of notice triggering the right to appeal is not complete until notice is received by those individuals.
  - (c) An appeal from any individual specified in paragraph (10)(b) above must be accepted as an appeal on behalf of the child.

Rule Chapter 1200-13-12 is amended by adding a new rule 1200-13-12-.12 which shall read as follows:

**1200-13-12-.12 OTHER APPEALS BY TENNCARE APPLICANTS AND ENROLLEES**

- (1) Non-Medicaid Enrollment, Disenrollment and Cost Sharing

- (a) Non-Medicaid TennCare applicants and Enrollees will be given an opportunity to have an administrative hearing before the Commissioner regarding denial of their applications, cost sharing disputes, and disputes regarding disenrollment from TennCare. The following provisions shall govern this process:
    - 1. If the Bureau has denied an application, a non-Medicaid applicant may appeal the denial. A request for appeal must be made within thirty (30) calendar days after the notice of the denial of the application is issued.
    - 2. A TennCare Enrollee may request an appeal regarding a disenrollment determination, the amount an Enrollee is obligated to pay in cost sharing, or the amount an Enrollee is assessed in premium payments to TennCare, that the Enrollee believes is erroneous. A request for appeal must be submitted within thirty (30) calendar days after the written notice of the adverse action is issued.
  - (b) Notice requirements - Whenever the Bureau of TennCare denies an application for non-Medicaid enrollment in TennCare or determines an Enrollee will be disenrolled, it will send the non-Medicaid TennCare applicant written notice of the right to request an appeal to the Commissioner, as provided by these rules. The notice must contain:
    - 1. An explanation of the reasons for the Bureau's actions, including a brief statement of the factual basis and the rule or contract provision relied upon by the Bureau;
    - 2. An explanation of the circumstances under which the TennCare applicant can request an appeal; and
    - 3. An explanation of the TennCare applicant's right to submit documents or other information in support of a request for appeal.
- (2) Other Appeals
- (a) Medicaid-certified Enrollees or Medicaid applicants have the right to appeal denials of Medicaid eligibility and termination of eligibility decisions to the Department of Human Services, in accordance with the provisions of Official Compilation Rules and Regulations of the State of Tennessee Chapter 1240-5-3 and the provisions and criteria set out in this chapter, as applicable.
  - (b) Enrollees applying for Seriously and Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) determination shall apply for each determination to the Department of Mental Health and Mental Retardation unless otherwise directed by the Commissioner. SPMI and SED determinations shall be appealed in accordance with the provisions and criteria of federal and state law, as applicable.

**Authority:** T.C.A. §§4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 2nd day of November, 2000, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 16th day of April, 2001. (11-09)

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## **RULEMAKING HEARINGS**

### **TENNESSEE COMMISSION ON AGING - 0030**

The Tennessee Commission on Aging will hold a public hearing to receive comments concerning new rules for state-funded Home and Community Based Services for Elderly and Disabled Adults. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place in the Donelson/Hermitage Senior Center, 108 Donelson Pike, Donelson, TN at 10:30 a.m. CT on January 17, 2001.

Written comments will be considered if received by close of business, January 17, 2001, at the office of the Tennessee Commission on Aging, Andrew Jackson Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Commission on Aging to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten days prior to (January 17, 2001) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Commission on Aging ADA Coordinator, Andrew Jackson Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860, 615-741-2056. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For complete copies of the text of the notice, please contact Nancy Brode, Tennessee Commission on Aging, Andrew Jackson Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860, telephone 615-741-2056.

## **SUBSTANCE OF PROPOSED RULES**

### **CHAPTER 0030-2-1**

#### **STATE-FUNDED HOME AND COMMUNITY BASED SERVICES FOR ELDERLY AND DISABLED ADULTS**

#### **NEW RULES**

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#### **0030-2-1-.01 PURPOSE**

The purpose of this rule is to implement the state-funded long-term care home and community based services program authorized by T.C.A. Section 71-5-1408 which is intended to serve individuals who are at least sixty (60) years of age or adults who have a disability due to a physical impairment, who do not qualify for long-term care services under the state medical assistance program, who are found to be at risk of losing their independence and for which there is no other resource available.

**0030-2-1-.02 DEFINITIONS**

- (1) "Advocate" means any legal representative or any other individual who the applicant or participant chooses to assist him/her at any stage of the appeals process.
- (2) "Area Agency on Aging" means the agency designated by the Commission on Aging in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.
- (3) "Applicant" means an individual who resides in Tennessee and has submitted an application to the area agency for the Program.
- (4) "Home-delivered meal" means an appropriate, nutritionally-balanced meal that meets at least one-third (1/3) of the current recommended dietary allowance (RDA) and which is delivered to the individual's home.
- (5) "Homemaker services" means those household tasks that enable an individual to live in a clean, safe and sanitary home environment, including:
  - (a) shopping for groceries and personal items;
  - (b) meal preparation;
  - (c) medication management;
  - (d) managing money;
  - (e) using the telephone;
  - (f) light housework; and
  - (g) laundry.
- (6) "Institutional care" means continuous, twenty-four (24) hour residential care provided by, among others:
  - (a) hospitals,
  - (b) nursing facilities,
  - (c) intermediate care facilities for the mentally retarded,
  - (d) community residential facilities for the developmentally disabled,
  - (e) residential facilities for the mentally ill, and
  - (f) state-owned and operated institutions.
- (7) "Personal care" means personal assistance, stand-by assistance, supervision or cues for persons having difficulties with one or more of the following five activities of daily living:
  - (a) eating;
  - (b) dressing;
  - (c) bathing;

- (d) toileting; and
  - (e) transferring in and out of bed.
- (8) "Program" means the state-funded Home and Community Based Services for Elderly and Disabled Adults Program.

**0030-2-1-.03 ELIGIBILITY**

- (1) "Eligible individual" means an individual whom:
  - (a) Is a resident of Tennessee; and
  - (b) Is an adult at least eighteen (18) years of age with functional limitations and is found to be at risk losing his/her independence through institutionalization.
- (2) Individuals eligible for home and community based services are adults with physical and/or cognitive disabilities who are assessed with a pre-defined level of limitations of Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL).
- (3) Individuals who qualify for Division of Mental Retardation Services (DMRS) long-term care services may not be eligible for these services.
- (4) Eligibility is determined through the use of a uniformly administered home and community based services eligibility assessment.
- (5) Eligible individuals are those individuals who do not qualify for state medical assistance long-term care waiver services.
- (6) Program funding shall be authorized after all other possible funding sources have been identified and all reasonable efforts have been employed to utilize those sources. Other sources include, but are not limited to, Medicaid waiver services to which an applicant may be entitled, Older Americans Act services, Veteran's long-term benefits, and Social Services Block Grant.
- (7) No program funds shall be used to provide services to an individual residing in an institution. However, funds may be used for assessment and for service plan development for current residents in institutions who could return to their homes if determined eligible for HCBS services.
- (8) In-home services available under state appropriations to the program for FY 2001 are limited to personal care, homemaker services and home-delivered meals. These services shall be made available to adults ages 18-59 on the same basis as to those age 60 and over using the needs criteria currently in use for aging services as set forth in the Commission on Aging "Policies and Procedures for Programs on Aging" and the "Guide to Contract Preparation and Reporting."

**0030-2-1-.04 COST SHARING AND PARTICIPANT CONTRIBUTION REQUIREMENTS**

- (1) Each Area Agency on Aging shall adhere to these cost sharing requirements for recipients of services funded in whole or in part through the Home and Community Based Services for Elderly and Disabled Adults Program funded through the Commission on Aging who can pay all or a portion of the cost of the services rendered.
- (2) Each Area Agency on Aging shall utilize a sliding fee scale to determine the amount a consumer of service must pay

toward the cost of services the recipient receives, except that no cost sharing shall be required for home-delivered meals which are eligible for USDA reimbursement or for services funded in part with monies from a federal funding source that prohibits mandatory cost sharing.

- (3) Except as otherwise provided, the cost sharing policies developed by the Commission on Aging shall utilize the following sliding fee scale:
  - (a) Consumers with income less than 200% of the Federal Benefit Rate shall not be required to contribute toward the cost of services they receive.
  - (b) Consumers with income at or above 200% of the Federal Benefit Rate shall be required to contribute a percentage of the cost of the services they receive (see Cost Share guidelines), but the cost share requirement shall not exceed 45% of their income.
  - (c) Recipients with incomes greater than 600% of the Federal Benefit Rate may receive information and assistance, including referrals to service providers, but shall be required to contribute 100% of the cost of the services they receive.
- (4) These cost sharing policies shall ensure that each Area Agency on Aging will:
  - (a) Provide applicants of service with a written description of the cost sharing guidelines prior to the commencement of any services;
  - (b) Determine the cost share amount based solely on the self-declaration of income with no consideration of assets;
  - (c) Collect consumer's cost share obligations utilizing an invoice format at least quarterly;
  - (d) Issue a receipt of payment to any consumer of service making a payment pursuant to these policies;
  - (e) Safeguard all funds collected through the cost sharing process including a record of accounts receivable for each consumer;
  - (f) Use methods for receiving cost share payments and contributions that protect the privacy of each consumer with respect to the amount contributed;
  - (g) Make a good faith effort to collect cost sharing obligations from consumers of service where feasible and cost effective. If the Area Agency on Aging finds that collecting a given amount is not cost effective, the Area Agency on Aging may waive this amount;
  - (h) Ensure that consumers who refuse to comply with cost share policies will not be served. If a consumer is unable to comply with the cost share policy, the Area Agency on Aging may temporarily adjust the cost share responsibility for that individual. This policy will be implemented on a case by case basis.
  - (i) Advise consumer of the appeals process set out in 0030-2-1-.06; and
  - (j) Ensure that consumers of service who are not required to pay a part of the cost share amount be given an opportunity to make a voluntary contribution toward the cost of service being provided.
- (5) All income collected in accordance with these rules shall be utilized by Area Agencies on Aging to provide additional home and community based services.

**0030-2-1-.05 CONFIDENTIALITY REQUIREMENTS FOR PARTICIPANT INFORMATION**

- (1) All personal information and data collected from or about any participant in the Home and Community Based Services for the Elderly and Disabled Program shall be obtained, handled and stored in accordance with privacy safeguards outlined in 0030-1-5-.08.
- (2) No application of these privacy safeguards for personal information shall prevent any person from reporting suspected abuse, neglect or exploitation to the Department of Human Services as required by T.C.A. Section 71-6-103.

**0030-2-1-.06 APPEALS PROCESS**

- (1) Any individual applying for or receiving home and community based services funded through the Tennessee Commission on Aging has a right to appeal decisions made about the services they are applying for or services received. These decisions include:
  - (a) Being found ineligible for the program,
  - (b) Having services denied, or
  - (c) Having services discontinued or reduced.
- (2) If an individual lacks capacity to make a knowing and informed decision regarding their own care, an advocate or other representative may appeal on their behalf.
- (3) If a consumer has such a complaint, he or she may appeal this decision by utilizing the following steps:
  - (a) Step 1. Informal Review with Service Coordinator and Service Coordinator Supervisor.
    1. Any individual applying for services should be given written information on how to file an appeal.
    2. Any problems or complaints should be discussed informally with the Service Coordinator and/or the Service Coordinator's Supervisor.
    3. This discussion may take place either in the home or at the office of the agency handling the request for service.
    4. The Service Coordinator's Supervisor must issue a written decision regarding the complaint to the consumer within five (5) calendar days of the date of the meeting.
    5. If the Service Coordination Agency is not the Area Agency on Aging, the Area Agency on Aging Director or his/her designee must be involved in the informal review.
  - (b) Step 2. Grantee Agency Review.
    1. If discussing the matter with the Service Coordinator and/or Service Coordinator Supervisor does not provide a satisfactory decision, a consumer may request a Grantee Agency Review.
    2. To receive a Grantee Agency Review, the consumer must make a request in writing, using the Request for Review Form, to the Executive Director of the Grantee Agency asking him/her to review the Service Coordinator's written decision. This request must be made within ten (10) calendar days of the date of the Service Coordinator Supervisor's decision.



3. The Executive Director of the Grantee Agency or his/her designee will then conduct a meeting with the consumer within twenty-one (21) calendar days and issue a written decision within ten (10) calendar days of the date of the meeting.

(c) Step 3. Administrative Review.

1. If the consumer is dissatisfied with the decision resulting from the Grantee Agency Review, he or she may request an Administrative Review in writing using the Request for Review Form to the Executive Director of the Tennessee Commission on Aging.
2. The consumer must mail this request within thirty (30) calendar days following receipt of the notice of the adverse action of the grantee agency.
3. Upon receipt of the request, the Tennessee Commission on Aging will notify the consumer and the Area Agency on Aging of the date, time and location of the hearing.
4. The Tennessee Commission on Aging will issue a decision within thirty (30) calendar days after the review is completed.
5. The Tennessee Commission on Aging review procedures will include:
  - (i) Timely written notice of the reasons for the action that is being appealed and the evidence on which the action was based;
  - (ii) An opportunity to review any pertinent evidence on which the action was based;
  - (iii) An opportunity for the consumer alone by or with a representative or legal counsel to appear before a hearing committee and/or the Board of the Commission to refute the basis for the decision.
  - (iv) An opportunity to present witnesses and documentary evidence;
  - (v) An opportunity to cross-examine witnesses; and,
  - (vi) A written decision which sets forth the reasons for the decision and the evidence on which the decision is based.
6. The Tennessee Commission on Aging may terminate formal review procedures at any point if the Area Agency on Aging and the consumer who requested the review negotiate a written agreement that resolves the issue(s) which led to the review.

(d) Step 4. Administrative Hearing.

1. If a consumer is dissatisfied with the decision resulting from the Administrative Review of the Tennessee Commission on Aging, he or she may appeal the decision by requesting in writing an Administrative Hearing.
2. This request should include a statement regarding the issue(s) the consumer wishes reviewed and must be signed and dated.
3. The Administrative Hearing will be conducted by an Administrative Law Judge (ALJ) or Hearing Officer from the Tennessee Secretary of State's Office.

4. The procedures and rules which govern the appeals process at this level are contained in Tennessee Code Annotated Section 4-5-301.
  5. Immediately following the hearing, the ALJ will prepare the decision, which will include a report of the findings of fact and the reasons for the decision based on those findings of fact.
  6. A copy will be sent to the Tennessee Commission on Aging, the Grantee Agency, the Area Agency on Aging and the consumer by registered or certified mail.
- (e) Step 5. Chancery Court.

If a consumer is dissatisfied with the decision resulting from the Administrative Hearing, he or she may appeal this decision through the local county court system.

- (f) Continuation of Services During an Appeal.
1. If a consumer appeals a decision to terminate a service already being received, those services will continue until the appeal is resolved.
  2. The Commission on Aging reserves the right to terminate or deny at any time those services which would be harmful to the consumer or which violate state or federal law or regulations and/or policies of the Home and Community Based Services for Elderly and Disabled Adults Program.
- (g) Consumer Liability for Costs of Services Received During an Appeal.

If an appeal by a consumer results in a decision unfavorable to the consumer and services were provided to the consumer during the appeal process, the cost of those services received will be the responsibility of the consumer.

#### **0030-2-1-.07 INTRASTATE ALLOCATION FORMULA**

- (1) From state funds available for allocation to information and assistance services, each Area Agency on Aging shall receive an award equal to one-ninth (1/9) of the total amount to be allocated with which to provide information about and assistance in obtaining long-term care services.
- (2) In fiscal year 2001, from state funds available for home delivered meals and other home and community based services each area agency shall receive an award based on the formula set out in 0030-1-10-.01(3). Thereafter, each planning and service area will receive a percentage of the funds available equal to the planning and service area's share of the state's population age 18 and over and with self-care limitations, using the best available data.
- (3) The formula will be reviewed at least every three (3) years and updated when new information on the target population becomes available.

**Authority:** *T.C.A. § 71-2-105(b)(1) and §71-5-1707(i) and 4-5-201 et. seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of November, 2000. (11-41)

**BOARD OF CHIROPRACTIC EXAMINERS - 0260**

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-4-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16<sup>th</sup> day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES****AMENDMENTS**

Rule 0260-2-.07, Application Review, Approval, Denial, Interviews, is amended by adding the following language as new paragraph (10):

- (10) Applicants, who by virtue of any criteria for licensure in the areas of mental, physical, moral or educational capabilities, as contained in the application and review process which indicates derogatory information or a potential risk to the public health, safety and welfare, may be required to present themselves to the Board, a Board member, or the Board Designee for an interview before final licensure may be granted. The interviews, which may be required, are considered part of the licensure process.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-4-103, 63-4-106, 63-4-108, 63-4-111, 63-4-112, and 63-4-114.

Rule 0260-2-.09, Renewal Of License, is amended by adding the following language as new paragraph (3):

- (3) Licensure renewal and reinstatement applications shall be treated as licensure applications and review decisions shall be governed by this rule and rule 0260-2-.07.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-4-106, 63-4-112, and 63-4-114.

Rule 0260-2-.20, Advertising, is amended by adding the following language as new subparagraph (2) (e), and is further amended by deleting subparagraph (6) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (e) and (6) (a) shall read:

- (2) (e) Solicitation – Initiating the offering of chiropractic services for compensation.

- (6) (a) Telephonic, facsimile, e-mail, written/printed, or in-person solicitation by licensees, their employees, or agents to victims of accidents or disaster shall be considered unethical if carried out within thirty (30) days of the accident or disaster, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-4-114.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-4-106, 63-4-114 and 63-4-122.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2000. (11-07)

### **TENNESSEE BOARD OF DENTISTRY - 0460**

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16<sup>th</sup> day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

### **SUBSTANCE OF PROPOSED RULES**

#### **AMENDMENTS**

Rule 0460-2-.05, Examination, is amended by adding the following language as new paragraph (10):

- (10) Applicants for licensure who have failed either the National Board or the Southern Regional Testing Agency (SRTA) examination three (3) times must successfully complete a remedial course of post-graduate studies at a school accredited by the American Dental Association before consideration for licensure by the Board. The applicant shall cause the program director of the post-graduate program to provide written documentation of the content of such course and certify successful completion.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-5-105 and 63-5-111.

Rule 0460-3-.05, Examination, is amended by adding the following language as new paragraph (10):

- (10) Applicants for licensure who have failed either the National Board or the Southern Regional Testing Agency (SRTA) examination three (3) times must successfully complete a remedial course of post-graduate studies at a school accredited by the American Dental Association before consideration for licensure by the Board. The applicant shall cause the program director of the post-graduate program to provide written documentation of the content of such course and certify successful completion.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-111 and 63-5-114.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of November, 2000. (11-38)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Tennessee Department of Environment and Conservation, Knoxville Environmental Assistance Center, Conference Room, 2700 Middlebrook Pike, Knoxville, TN 37921 on January 22, 2001 at 6:30 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

Site Number	Site Name
Knox County (47)	
47-506	Ideal Basic Site Knoxville, TN

*Authority:* T.C.A. §§68-212-206(e) and 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000. (11-33)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Tennessee Department of Environment and Conservation, Knoxville Environmental Assistance Center, Conference Room, 2700 Middlebrook Pike, Knoxville, TN 37921 on January 22, 2001 at 7:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

Site Number	Site Name
Knox County (47)	
47-524	Middlebrook Pike Gas Site Knoxville, TN

**Authority:** T.C.A. §§68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000. (11-35)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Tennessee Department of Environment and Conservation, Knoxville Environmental Assistance Center, Conference Room, 2700 Middlebrook Pike, Knoxville, TN 37921 on January 22, 2001 at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

Site Number	Site Name
Knox County (47)	
47-533	TRW Carr Division Knoxville, TN

**Authority:** T.C.A. §§68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000. (11-34)

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Brentwood Municipal Center, Annex Room, 5211 Maryland Way, Brentwood, TN 37027 on January 16, 2001 at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

Site Number	Site Name
Williamson County (94)	
94-508	Kennon Site/Genesco Brentwood, TN

*Authority:* T.C.A. §§68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000.



**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Multi Media Room, third floor, William Snodgrass Towers, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 16th day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0155 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or call (615) 741-0145.

**SUBSTANCE OF PROPOSED RULE**

Rule 1200-13-12-.11 Appeal of Adverse Actions Affecting a TennCare Program Enrollee is deleted in its entirety and replaced with a new rule 1200-13-12-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits which shall read as follows:

**1200-13-12-.11 APPEAL OF ADVERSE ACTIONS AFFECTING TENNCARE SERVICES OR BENEFITS**

- (1) Definitions. For the purpose of this rule, the following definitions apply:
- (a) Administrative Hearing - a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer who renders an initial order under Tenn. Code Ann. § 4-5-314. If an enrollee appeals the initial order under Tenn. Code Ann. § 4-5-315, the Commissioner may render a final order.
  - (b) Adverse Action Affecting TennCare Services or Benefits - includes, but is not limited to, delay, denial, reduction, suspension or termination of TennCare benefits, as well as any other act or omission of the TennCare Program which impairs the quality, timeliness, or availability of such benefits.
  - (c) Commissioner - the chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located, or the Commissioner's designee.
  - (d) Continuation or Reinstatement of Services – the following services or benefits are subject to continuation or reinstatement pursuant to paragraph (5)(g) of this rule:
    - 1. Those services currently or most recently provided to an enrollee; or
    - 2. Those services being provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or

3. Those services being provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
  4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
  5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.
- (e) Covered Services - the services and benefits that:
1. TennCare MCOs or BHOs are required to cover, as set out in section 1200-13-12-.04 of the rules of the Bureau of TennCare; or
  2. In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1315 of the Social Security Act, the services and benefits that are required to be covered under the terms and conditions of such waivers.
- (f) Delay - includes, but is not limited to:
1. Any failure to provide timely receipt of TennCare services, and no specific waiting period may be required before the enrollee can appeal;
  2. An MCC's failure to provide timely prior authorization of a TennCare service. In no event shall a prior authorization decision be deemed timely unless it is granted within twenty-one (21) calendar days of a request for such authorization, and a shorter period is required if a more prompt response is medically necessary in light of the enrollee's condition and the urgency of his need, as defined by a prudent lay person.
- (g) Enrollee - as used in this rule, an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act. As concerns MCC compliance with this section, the term only applies to those individuals for whom the MCC has received at least one day's prior written or electronic notice from the TennCare Bureau of the individual's assignment to the MCC.
- (h) Impartial Hearing Officer - as used in this rule, an Administrative Judge or Hearing Officer who is not an employee, agent or representative of the MCC and who did not participate in, nor was consulted about, any TennCare Bureau review prior to the Administrative Hearing.
- (i) MCC - a managed care contractor which has signed a TennCare Contractor's agreement with the State of Tennessee and which operates provider networks. An MCC may be a managed care organization (MCO), behavioral health organization (BHO), pharmacy benefits manager (PBM), dental benefits manager, or state government agency.
- (j) MCC - Initiated Reduction, Termination or Suspension of Medical Assistance - as used in this rule, a decision by an enrollee's MCC to reduce, terminate or suspend TennCare services which is contrary to an order of the enrollee's treating clinician.

- (k) Medical Assistance - health care, services and supplies furnished to an enrollee and funded in whole or in part under Title XIX of the Social Security act, 42 U.S.C. §§ 1396, et seq. and Tenn. Code Ann. § 71-5-101, et seq. Medical assistance includes the payment of the cost of care, services, drugs and supplies. Such care, services, drugs, and supplies shall include services of qualified providers who have contracted or otherwise agreed with an MCC to provide services to TennCare enrollees.
- (l) Medically Contraindicated - as used in this rule, a TennCare benefit or service which it is necessary to withhold in order to safeguard the health or safety of the enrollee.
- (m) Provider - a health care provider eligible by professional qualifications to participate in the TennCare Program and who is acting within his scope of practice.
- (n) Provider with Prescribing Authority - in the context of TennCare pharmacy services, a health care professional authorized by law or regulation to order prescription medications for her patients, and who:
  - 1. Participates in the provider network of the MCC in which the enrollee is enrolled; or
  - 2. Has received a referral of the enrollee, approved by the MCC, authorizing her to treat the enrollee; or
  - 3. In the case of a TennCare enrollee who is also enrolled in Medicare, is authorized to treat Medicare patients.
- (o) Prudent Lay Person - a reasonable individual who possess an average knowledge of health and medicine.
- (p) Readable - no more than a sixth grade level of reading proficiency is needed to understand notices or other written communications, as measured by the Fogg index, the Flesch Index, the Flesch-Kincaid Index, or other recognized readability instrument. The template notices approved by the U.S. District Court following entry of the Grier v. Wadley Revised Consent Decree are readable.
- (q) Receipt of Mailed Notice - Receipt of any notice contemplated by this rule, unless otherwise specified in the rule, shall be presumed to be within five (5) calendar days of the date of mailing.
- (r) Reconsideration - the process by which an MCC reviews and renders a decision regarding an enrollee's appeal of the MCC's adverse action affecting TennCare benefits.
- (s) Reduction, Suspension or Termination - termination, suspension, or reduction in amount, scope, and duration of a TennCare covered service, or other acts or omissions on the part of an MCC which results in the interruption of a course of necessary clinical treatment for a continuing spell of illness or medical condition.
- (t) TennCare Appeal Form - the TennCare form(s) which are completed by an enrollee, or by a person authorized by the enrollee to do so, whenever an enrollee appeals an adverse action affecting TennCare services. The use of the form is not required, but is encouraged to ensure the MCC and TennCare Bureau have the necessary information.
- (u) TennCare Services or TennCare Benefits - any medical assistance that is administered by the Bureau of TennCare or its contractors and which is funded wholly or in part with federal funds under the Medicaid Act or any waiver thereof, but excluding:
  - 1. Medical assistance that can be appealed through an appeal of a pre-admission evaluation (PAE) determination; and

2. Medicare cost sharing services that do not involve utilization review by the Bureau of TennCare or its contractors.
    - (v) TennCare Bureau (“TennCare”) - the administrative unit of the state Department which is responsible for the administration of the TennCare Program.
    - (w) TennCare Program - the joint federal/state medical assistance program administered pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq. (hereinafter “Medicaid Act”), including Tennessee’ Medicaid Demonstration Project Number 11-C-99638/4-03 called “TennCare.”
    - (x) Time – Sensitive Care - care which requires a prompt medical response in light of the enrollee’s condition and the urgency of her need as defined by a prudent lay person; provided, however, that a case may be treated as non-time-sensitive upon the written certification of the enrollee’s treating physician or clinician.
    - (y) Treating Clinician - a health care provider who has provided diagnostic or treatment services for an enrollee, for purposes of treating, or supporting the treatment of, a known or suspected medical condition. The term excludes providers who have evaluated an enrollee’s medical condition primarily or exclusively for the purposes of supporting or participating in a decision regarding TennCare coverage.
- (2) Notice Requirements
- (a) When Written Notice is Required
    1. A written notice shall be given to an enrollee by his/her MCC of any adverse action taken by the MCC to deny, reduce, suspend, or terminate medical assistance.
    2. A written notice shall be given to an enrollee whenever his/her MCC has reason to expect that covered medical assistance for the enrollee will be delayed beyond the time lines prescribed by the TennCare contract or the terms and conditions of the TennCare waiver. Actions which can reasonably be anticipated to delay or disrupt access to medical assistance include:
      - (i) Change of primary care provider;
      - (ii) Pharmacy “lock-in”;
      - (iii) Decisions affecting the designation of a person as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED);
      - (iv) Termination of a provider’s contract, by either party to the contract; or
      - (v) Inability to provide an adequate provider network.
    3. A written notice shall be given to an enrollee when he/she has been prescribed a covered service on an on-going basis or with no specific ending date and the service is subject to a prior authorization requirement.
    4. A written notice shall be given to an enrollee of any MCC-initiated reduction, termination or suspension of inpatient hospital care.
    5. A written notice shall be given to an enrollee of any provider-initiated reduction, termination or suspension of:

- (i) Any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child;
- (ii) Any inpatient psychiatric or residential service;
- (iii) Any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available; or
- (iv) Home health services.

When a provider proposes to reduce, terminate or suspend one of the above services, the provider shall promptly notify the enrollee's MCC of the proposed action and recommended discharge plan, if any, to insure compliance with this rule.

(b) Timing of Written Notice

1. Written notice of MCC-initiated reduction, termination or suspension of medical assistance must be provided to an enrollee within the time frames required by 42 C.F.R. §§431.210-.214 (usually ten (10) days in advance). However, in instances of MCC-initiated reduction, termination or suspension of inpatient hospital treatment, the notice must be provided to an enrollee at least two business days in advance of the proposed action. Where applicable, the exceptions set out at 42 C.F.R. § 431.211-.214 permit or require reduction of the time frames within which advance notice must be provided.
2. Written notice of an MCC's decision in response to a request by or on behalf of an enrollee for medical or related services must be provided within twenty-one (21) calendar days of receipt of the request; however, a shorter period is required if a more prompt response is medically necessary in light of the enrollee's condition and the urgency of his/her need, as defined by a prudent lay person.
3. Written notice of delay of covered medical assistance must be provided to an enrollee immediately upon an MCC's receipt of information leading it to expect that such delay will occur.
4. Written notice of expiration of a prior authorization for a covered service which has been prescribed on an on-going basis or with no specific ending date must be provided to an enrollee no more than forty (40) days, nor less than thirty (30) days, prior to the expiration of the prior authorization. However, in the event that the period of authorization is less than thirty (30) days, the notice shall be issued upon authorization.
5. Where required by paragraph (2)(a)5. of this rule, written notice of provider-initiated reduction, termination or suspension of services must be provided to an enrollee at least two (2) business days in advance of the proposed action.
6. Written notice is deemed to be provided to an enrollee upon deposit with the U.S. Postal Service or other commercial mail carrier, or upon hand-delivery to an enrollee or his/her representative.

(c) Notice Contents

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance, the notice must contain the following elements, written in concise, readable terms:

- (i) The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services.
  - (ii) A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision, the statement of reasons shall:
    - (I) Identify by name those clinicians who were consulted in reaching the decision at issue;
    - (II) Identify specifically those medical records upon which those clinicians relied in reaching their decision; and
    - (III) Specify what part(s) of the criteria for medical necessity or coverage was not met.
  - (iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.
  - (iv) Inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of urgent care and, in the case of termination, reduction or suspension of on-going services, the right to continuation of services pending appeal; and
  - (v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.
2. Binding Effect of Original Notice. TennCare and the MCCs shall be bound by their own notices, and may not rely upon any reasons or legal authorities other than those which they include in their written notices to a TennCare enrollee. In the event that an enrollee appeals an adverse action, the reviewing authority shall consider only the factual reasons and legal authorities cited in the original notice to the enrollee, except that additional evidence beneficial to the enrollee may be considered on appeal.
3. Insufficient Legal Authority in Notice. TennCare and the MCCs may not cite or rely upon policies that are inconsistent with federal law, the TennCare waiver, properly promulgated rules or contract provisions. If the MCC's reasons or legal authorities are not sufficient to support the proposed adverse action, the proposed action must be overruled and the disputed service must be provided. While this does not preclude the issuance of a new notice that may provide the predicate for subsequent adverse action, the new notice shall not cure the deficiencies in the original notice.
- (d) Special Provisions Pertaining to Pharmacy Notice.
- 1. If the service at issue is a prescription drug, and the enrollee does not receive the medication of the type and amount prescribed, a written notice shall be provided by the pharmacy to inform the enrollee of:
    - (i) The circumstances under which the enrollee may obtain a two week supply of the prescribed medicine and how to do so;
    - (ii) The enrollee's right to appeal the denial or termination of the medication and how to do so; and

- (iii) The right to request continuation of services pending appeal.
2. In the event that the enrollee appeals a denial or termination of a pharmacy benefit and the appeal is not resolved to the enrollee's satisfaction within ten (10) days from the date of receipt of the appeal, the MCC shall issue a notice containing the information described in paragraph (2)(c) above.
- (e) Notice of Rights. The Bureau of TennCare shall provide annual notice to TennCare enrollees of their notice and appeal rights established by this rule, including enrollees' recourse when billed by a provider for TennCare covered services. Additionally, upon enrollment in an MCC, the MCC shall give the enrollee a plain language explanation of appeal rights.
  - (f) Proper use of the approved template notices designated by the Grier v. Wadley Revised Consent Decree shall be deemed to satisfy the notice requirements specified by this rule.
  - (g) Violation of Notice Requirements and Corrective Action
    1. No adverse action affecting TennCare services shall be effective unless the notice requirements of the federal regulations (42 C.F.R. § 431.210-.214), as enhanced or otherwise modified herein, have been complied with. TennCare shall not withhold, or permit others acting on its behalf to withhold, any TennCare services in violation of this requirement.
    2. Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule, TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.
    3. In the event that the enrollee lacks a prescription for the covered TennCare service which has been delayed, denied, reduced, suspended or terminated in violation of notice requirements, the following shall occur:
      - (i) The enrollee will be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed;
      - (ii) The provider will be informed that the service will be authorized if prescribed; and
      - (iii) Entitlement to the service will not be controlled by the MCC's utilization review process.
    4. In the event that the notice violation has occurred with regard to a delay of access to a physician to secure the requested medical assistance, such access shall be provided as soon as practicable. The enrollee shall be entitled to continue to receive such service until such time as the MCC takes those actions required by federal regulations and this rule as a prerequisite to taking any adverse action affecting TennCare services.
- (3) Appeal Rights of Enrollees. Enrollees have the following rights:
    - (a) To appeal adverse actions affecting TennCare services.
    - (b) To have oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions that have been taken or are proposed to be taken, treated as appeals, including instances in which:

1. The enrollee lacks an order or prescription from a provider supporting the appeal;
  2. TennCare or an MCC has agreed to cover a prescribed service in an amount that is less than the amount or duration sought by the enrollee;
  3. TennCare or an MCC has agreed to provide a covered service that is different from that sought by the enrollee;
  4. An enrollee seeks to contest a delay or denial of care resulting from the MCC's failure or refusal to make a needed service available, due to the inadequacy of the MCC's provider network;
  5. An enrollee seeks to contest a denial of his right under the TennCare waiver to choose his own primary care provider (PCP) from among a panel offered by the MCC, or seeks to contest a delay or denial of care resulting from the involuntary assignment of a PCP;
  6. An enrollee seeks to contest or change his assignment to a particular MCO or BHO;
  7. An enrollee seeks to contest denial of TennCare coverage for services already received, regardless of the cost or value of the services at issue; and
  8. An enrollee seeks to contest a decision granting or withholding designation as severely and persistently mentally ill (SPMI) or severely emotionally disturbed (SED).
- (c) Have the appeal rights that are prescribed by 42 C.F.R. Part 431, Subpart E and Tenn. Code Ann. §§ 4-5-301, et seq.
- (d) Be allowed thirty (30) days from receipt of written notice or, if no notice is provided, from the time the enrollee becomes aware of an adverse action, to appeal any adverse action affecting TennCare services.
- (e) To appeal in person, by telephone or in writing. Reasonable accommodations shall be made for persons with disabilities who require assistance with their appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county Department of Human Services or Health Department offices shall be stamped, and immediately forwarded to the TennCare Bureau for processing and entry in the central registry;
- (f) To file an appeal through a toll-free phone number on a twenty-four (24) hours a day, seven (7) days a week basis. Resolution of appeals outside of regular business hours will be available only in cases of emergency medical condition.
- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R. §§ 431.230-.231 as adapted by this rule, pending appeal when they submit a timely appeal and request for such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:
1. An MCC's failure to inform an enrollee of the availability of such continued services;
  2. An MCC's failure to reimburse providers for delivering services pending appeal; or
  3. An MCC's failure to provide such services when timely requested.



- (h) The right to an impartial appeals process. But for initial reconsideration by an MCC as permitted by this rule, no person who is an employee, agent or representative of an MCC may participate in deciding the outcome of a TennCare appeal. No state official may participate in deciding the outcome of an enrollee's appeal who was directly involved in the initial determination of the action in question.

(4) Special Provisions Relating to Appeals

- (a) Individualized Decisions Required. Neither the TennCare program nor its MCCs may employ utilization control guidelines or other quantitative coverage limits, whether explicit or de facto, unless supported by an individualized determination of medical necessity based upon the needs of each TennCare enrollee and his or her medical history.
- (b) Decisions to be Supported by Substantial and Material Evidence. Throughout all stages of an appeal of an adverse action affecting TennCare services, decisions shall be based upon substantial and material evidence. In cases involving clinical judgments, this requirement means that:
  - 1. Appeal decision must be supported by medical evidence, and it is the MCCs' and TennCare's responsibility to elicit from enrollees and their treating providers all pertinent medical records that support an appeal; and
  - 2. The decisions or opinions of an enrollee's treating physician or other prescribing clinician shall not be overruled by either the MCC initially or TennCare upon review, unless there is substantial and material medical evidence, documented in the enrollee's medical records, to justify such action. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse action affecting TennCare services.
- (c) Record on Review. When TennCare receives an appeal from an enrollee regarding an adverse action affecting TennCare services, TennCare is responsible for obtaining from the MCC any and all records or documents pertaining to the MCC's decision to take the contested action. TennCare shall correct any violation of this rule that is evident from a review of those records.

(5) Hearing Rights of Enrollees

- (a) TennCare shall inform enrollees that they have the right to an in-person hearing, a telephone hearing or other hearing accommodation as may be required for enrollees with disabilities;
- (b) Enrollees shall be entitled to a hearing before an impartial hearing officer that affords enrollees the right to:
  - 1. Representation at the hearing by anyone of their choice, including a lawyer;
  - 2. Review information and facts relied on for the decisions by the MCC and the TennCare Bureau before the hearing;
  - 3. Cross-examine adverse witnesses;
  - 4. Present evidence, including the right to compel attendance of witnesses at hearings;
  - 5. Review and present information from their medical records;

6. Present evidence at the hearing challenging the adverse decision by his/her MCC;
  7. Ask for an independent medical opinion, at no expense to the enrollee;
  8. Continue or reinstate ongoing services pending a hearing decision, as specified in this rule;
  9. A written decision setting out the impartial hearing officer's rulings on findings of fact and conclusions of law; and
  10. An initial hearing decision (initial order) by the impartial hearing officer within ninety (90) days, or thirty-one (31) days in the case of a time-sensitive appeal, of the date of receipt of the appeal.
- (c) TennCare shall not impair the ability of an enrollee to appeal an adverse hearing decision by requiring that the enrollee bear the expense of purchasing a hearing transcript when such purchase would be a financial hardship for the enrollee.
- (d) Parties to an Appeal. Under this rule, the parties to an administrative hearing are limited to those permitted by federal regulations. The purpose of the hearing is to focus on the enrollee's medical needs. MCCs are not permitted to intervene or participate as parties in an enrollee's hearing. However, MCC employees may participate as witnesses in hearings. Further, nothing in this provision bars participation by an MCC in any informal resolution phase of the appeal process prior to a hearing before the impartial hearing officer.
- (e) Consistent with the Code of Judicial Conduct, impartial hearing officers shall assist pro se enrollees in developing the factual record; they shall have authority to order second medical opinions at no expense to the enrollee.
- (f) Review of Hearing Decisions/Binding Effect of Decisions in Favor of Enrollees.
1. Review of impartial hearing officers' decisions shall be available to enrollees pursuant to the Tennessee Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, et seq.
  2. If the enrollee prevails at any stage of the appeal process, the decision is binding upon TennCare and the MCC. If the enrollee prevails by decision of an impartial hearing officer, the services shall be provided, and neither TennCare nor the MCC shall appeal.
  3. An impartial hearing officer's decision in an enrollee's appeal shall not be deemed precedent for future appeals. To seek relief from the decision, TennCare may apply to federal court or enact rules and regulations, including emergency or public necessity rules, in accordance with the state Administrative Procedures Act.
- (g) Continuation or Reinstatement of TennCare Services
1. Except as permitted under 42 C.F.R. §§ 431.213, 431.214 and 431.220, as modified by this rule, TennCare services shall continue (or be reinstated) until an initial hearing decision if the enrollee appeals and requests:
    - (i) Continuation of services within two (2) business days of the receipt of MCC-initiated notice of action to terminate, suspend or reduce ongoing inpatient hospital treatment,

- (ii) Continuation of services within two (2) business days of the receipt of provider-initiated notice of action to terminate, suspend or reduce any behavioral health service for a severely and persistently mentally ill (SPMI) adult enrollee or severely emotionally disturbed (SED) child, any inpatient psychiatric or residential service, any service being provided to treat a patient's chronic condition across a continuum of services when the next appropriate level of medical service is not immediately available, or home health services; or
  - (iii) Continuation of services within ten (10) days of the receipt of the MCC-initiated notice of action to terminate, suspend or reduce other ongoing services; or
  - (iv) Reinstatement of the services described in paragraph (5)(g)1.(i) - (iii) above within thirty (30) days of the receipt of the notice of action.
2. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (5)(g)1.(ii) above, the enrollee shall be afforded access to a written second medical opinion from a qualified provider who participates in the MCC's network. If there has not already been a break in receipt of the services, the benefits shall continue until receipt of the written second medical opinion. Services shall continue (or be reinstated) thereafter pending appeal only if and to the extent prescribed by the second provider.
  3. In the case of a timely request for continuation or reinstatement of the TennCare services described in paragraph (5)(g)1.(i) and (iii) above, the services shall continue (or be reinstated) pending appeal only if and to the extent prescribed by the enrollee's treating clinician.
  4. Services shall not continue, but may be immediately reduced, terminated, or suspended if they are determined medically contraindicated under paragraph (9) below.
  5. Appeals involving continuation of ongoing services determined by TennCare as not medically necessary shall be handled as expedited appeals. Expedited appeals must be concluded within thirty-one (31) days, and such time frame may not be delayed except as ordered by the impartial hearing officer. Therefore, if an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed services pending a decision if:
    - (i) The impartial hearing officer finds that such continuance is not necessitated by acts or omissions on the part of the State or MCC;
    - (ii) The enrollee lacks a compelling justification for the requested delay; and
    - (iii) The enrollee received at least three weeks notice of the hearing, in the case of a standard appeal, or at least one week's notice, in the case of an expedited appeal.
- (h) Expedited appeal. Expedited appeal of any action involving time-sensitive care must be available to enrollees as follows:
1. The enrollee, the enrollee's parent, legal guardian or representative, or the enrollee's primary care provider or treating specialist asserts that the care in question requires a prompt medical response in light of the enrollee's condition and the urgency of the enrollee's needs as defined by a prudent lay person.

2. Care is not time-sensitive, and an appeal is not expedited, if the enrollee's treating physician or clinician certifies in writing that the matter is not time-sensitive.
  3. An expedited appeal shall be resolved by hearing and a written hearing decision (initial order) within thirty-one (31) days from the date the appeal is received.
- (6) Special Provisions Pertaining to Pharmacy
- (a) When a provider with prescribing authority prescribes a medication for an enrollee, and the prescription is presented at a pharmacy that participates in the enrollee's MCC, the enrollee is entitled to:
    1. The drug as prescribed, if the drug is on the MCC's formulary and does not require prior authorization; or
    2. The drug as prescribed, if the prescribing provider has obtained prior authorization or established the medical necessity of the medication; or
    3. An alternative medication, if the pharmacist consults the prescribing provider when the enrollee presents the prescription to be filled, and the provider prescribes a substituted drug; or
    4. A two week supply of the prescribed drug, if the pharmacist is unable when the enrollee presents the prescription to be filled, to obtain MCC authorization to substitute an alternative medication. If the enrollee does not receive the medication of the type and amount prescribed, TennCare or the MCC shall immediately provide written notice of the right to appeal, including the right to request continuation of services pending appeal. The enrollee's entitlement to receive a two (2) week supply of the prescribed drug is subject to the provisions of paragraph (6)(b) below.
  - (b) The enrollee is entitled to a two (2) week supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
    1. The medication is not classified by the FDA as less than effective (i.e. a DESI, LTE or IRS drug); or
    2. The medication is not a drug in a non-covered TennCare therapeutic category (e.g., appetite suppressants, drugs to treat infertility); or
    3. Use of the medication has not been determined to be medically contraindicated because of the patient's medical condition or possible adverse drug interaction; or
    4. If the prescription is for a total quantity less than a two (2) week supply, the pharmacist must provide a supply up to the amount prescribed.
  - (c) In some circumstances, it is not feasible for the pharmacist to dispense a two (2) week supply because the drug is packaged by the manufacturer to be sold as the original unit or because the usual and customary pharmacy practice would be to dispense the drug in the original packaging. Examples would include, but not be limited to, inhalers, eye drops, ear drops, injections, topicals (creams, ointments, sprays), drugs packaged in special dispensers (birth control pills, steroid dose packs), and drugs that require reconstitution before dispensing (antibiotic powder for oral suspension). When coverage of a two (2) week supply of a prescription would otherwise be required and when, as described above, it is not feasible for the pharmacist to dispense a two (2) week supply, it is the responsibility of the MCC to provide coverage for either the two week supply or the usual dispensing amount, whichever is greater.

- (d) If the enrollee does not receive the medication of the type and amount prescribed, written notice must be issued by the pharmacy, in accordance with paragraph (2)(d) above.

(7) Release of Enrollees' Medical Records

- (a) When a request is made, by or on behalf of a TennCare enrollee, for approval of a TennCare service or for an appeal of an adverse action affecting TennCare services, the enrollee is deemed to have consented to release of his/her relevant medical records to his/her MCC and the TennCare Bureau for the purposes of acting upon the enrollee's request.
- (b) Providers shall promptly provide copies of an enrollee's medical records to the enrollee's MCC(s) and to the TennCare Bureau upon being informed by the MCC(s) or TennCare Bureau that the records have been requested for the purpose of acting upon an enrollee's request for approval of a TennCare service or an enrollee's appeal of an adverse action affecting TennCare services.
- (c) An enrollee's consent to release of his/her medical records may be evidenced by his signature (or his provider's or authorized representative's signature) upon the enrollee's initial application for TennCare, upon his TennCare appeal form or other written request for authorization or appeal, or, in the event of an appeal by telephone, by a TennCare Bureau employee's signing of an appeal form on behalf of an enrollee with documentation of consent to do so.
- (d) The medical records obtained by MCCs and the TennCare Bureau under this rule remain confidential. MCCs and the TennCare Bureau may use and disclose the records only as necessary in their consideration of the enrollee's request for approval of a TennCare service or the enrollee's appeal of an adverse action affecting TennCare services.

(8) Time Requirements and Corrective Action

- (a) Subject to the provisions of subparagraphs (8)(e) and (f) below and to provisions relating to medical contraindication (paragraph (9)), the failure of an MCC to act upon a request for prior approval within twenty-one (21) days shall result in automatic authorization of the requested service.
- (b) The failure of an MCC to complete reconsideration of enrollee appeals within fourteen (14) days of notification by TennCare, in the case of a standard appeal, or within five (5) days in the case of expedited appeals involving time-sensitive care, shall result in immediate resolution of the appeal in favor of the enrollee, without further consideration or proceedings, subject to the provisions of subparagraphs (8)(e) and (f) below and to provisions relating to medical contraindication (paragraph (9)).
- (c) All standard appeals, including, if not previously resolved in favor of the enrollee, a hearing before an impartial hearing officer, shall be resolved within ninety (90) days of receipt of the enrollee's request for an appeal. All expedited appeals shall be resolved within thirty-one (31) days of receipt of the request for appeal. Calculation of the ninety (90) day or thirty-one (31) day deadline may be adjusted so that TennCare is not charged with any delays attributable to the enrollee. However, no delay may be attributed to an enrollee's request for a continuance of the hearing, if she received less than three (3) week's notice of the hearing, in the case of a standard appeal, or less than one (1) week's notice, in the case of an expedited appeal. An enrollee may only be charged with the amount of delay occasioned by her acts or omissions, and any other delays shall be deemed to be the responsibility of TennCare.
- (d) Failure to meet the 90 day or 31 day deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of

subparagraphs (8)(e) and (f) below, and to provisions relating to medical contraindication (paragraph (9)). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, she shall not be liable for the cost of services provided past the deadline for resolution of the appeal.

- (e) When, under the provisions of subparagraphs (8)(a), (b) or (d) above, a failure to comply with the time frames would require the immediate provision of a disputed service, TennCare may decline to provide the service pending a contrary order on appeal, based upon a determination that the disputed service is not a TennCare-covered service. A determination that a disputed service is not a TennCare-covered service may not be based upon a finding that the service is not medically necessary. Rather, it may only be made with regard to a service that:
    - 1. Is subject to an exclusion that has been reviewed and approved by the federal Health Care Financing Administration and incorporated into a properly promulgated state regulation, or
    - 2. Which, under Title XIX of the Social Security Act, is never federally reimbursable in any Medicaid program.
  - (f) In the event that the enrollee lacks a prescription for a covered TennCare service, the enrollee shall be immediately afforded access, at the earliest time practicable, to a qualified provider to determine whether the service should be prescribed. The provider will be informed that the service will be authorized if prescribed. Entitlement to the service will not be controlled by an MCC's utilization review process.
  - (g) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC must complete corrective action to implement the decision. Corrective action to implement the decision includes:
    - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
    - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at her own cost; or
    - 3. If the enrollee has already received the service, but has not paid the provider, ensuring that the enrollee is not billed for the service and ensuring that the enrollee's care is not jeopardized by non-payment.
- (9) Medical Contraindication.
- (a) Whenever the terms of this rule require the provision of TennCare benefits or services to an enrollee, such obligation shall be relieved upon the written certification of a provider who is familiar with the beneficiary's medical condition that the TennCare benefit or service in question is medically contraindicated. The provider must either be employed by the state or, if a licensed pharmacist determining contraindication with regard to a prescribed drug, must be making such determination consistent with pre-established standards and procedures approved by the state.
  - (b) If a TennCare service is determined to be medically contraindicated as set out above, written notice must be immediately provided to the enrollee, and the notice must be accompanied by the provider's certification that the service must be withheld in order to protect the enrollee's health or safety. A copy of the notice and provider certification must be forwarded to the Tennessee Justice Center.

- (10) Special Provisions Relating to Children in State Custody. In addition to the rights and protections established by 42 C.F.R. Part 431, Subpart E and the terms of this rule, children in state custody shall also receive the following enhanced notice and appeal rights:
- (a) The Tennessee Department of Children’s Services (DCS) must provide notice of any delay in providing a TennCare service that is administered by DCS. Such delay is immediately appealable on that child’s behalf and cannot be required to last a particular length of time before issuance of the notice or processing of an appeal.
  - (b) Whenever there is an adverse action affecting TennCare services (regardless of which contractor or government agency is administering such services), timely notices required by this rule must be sent to the individuals specified in the DCS implementation plan which was approved by the Court in *Grier v. Wadley*. In the case of services administered by MCCs other than DCS, the responsible MCC shall provide notice to DCS, which shall ensure that timely notice is provided to the required individuals. Delivery of notice triggering the right to appeal is not complete until notice is received by those individuals.
  - (c) An appeal from any individual specified in paragraph (10)(b) above must be accepted as an appeal on behalf of the child.

Rule Chapter 1200-13-12 is amended by adding a new rule 1200-13-12-.12 which shall read as follows:

**1200-13-12-.12 OTHER APPEALS BY TENNCARE APPLICANTS AND ENROLLEES**

- (1) Non-Medicaid Enrollment, Disenrollment and Cost Sharing
  - (a) Non-Medicaid TennCare applicants and Enrollees will be given an opportunity to have an administrative hearing before the Commissioner regarding denial of their applications, cost sharing disputes, and disputes regarding disenrollment from TennCare. The following provisions shall govern this process:
    - 1. If the Bureau has denied an application, a non-Medicaid applicant may appeal the denial. A request for appeal must be made within thirty (30) calendar days after the notice of the denial of the application is issued.
    - 2. A TennCare Enrollee may request an appeal regarding a disenrollment determination, the amount an Enrollee is obligated to pay in cost sharing, or the amount an Enrollee is assessed in premium payments to TennCare, that the Enrollee believes is erroneous. A request for appeal must be submitted within thirty (30) calendar days after the written notice of the adverse action is issued.
  - (b) Notice requirements - Whenever the Bureau of TennCare denies an application for non-Medicaid enrollment in TennCare or determines an Enrollee will be disenrolled, it will send the non-Medicaid TennCare applicant written notice of the right to request an appeal to the Commissioner, as provided by these rules. The notice must contain:
    - 1. An explanation of the reasons for the Bureau’s actions, including a brief statement of the factual basis and the rule or contract provision relied upon by the Bureau;
    - 2. An explanation of the circumstances under which the TennCare applicant can request an appeal; and

3. An explanation of the TennCare applicant's right to submit documents or other information in support of a request for appeal.
- (2) Other Appeals
- (a) Medicaid-certified Enrollees or Medicaid applicants have the right to appeal denials of Medicaid eligibility and termination of eligibility decisions to the Department of Human Services, in accordance with the provisions of Official Compilation Rules and Regulations of the State of Tennessee Chapter 1240-5-3 and the provisions and criteria set out in this chapter, as applicable.
  - (b) Enrollees applying for Seriously and Persistently Mentally Ill (SPMI) or Seriously Emotionally Disturbed (SED) determination shall apply for each determination to the Department of Mental Health and Mental Retardation unless otherwise directed by the Commissioner. SPMI and SED determinations shall be appealed in accordance with the provisions and criteria of federal and state law, as applicable.

*Authority:* T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2000. (11-42)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200  
DIVISION OF HEALTH CARE FACILITIES**

There will be a hearing before the Tennessee Department of Health to consider the promulgation of rules pursuant to T.C.A. §§ 68-11-202 et seq. and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administration Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the ground floor of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37247-0508 at 1:00 p.m. C.D.T. on the 17th day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Department of Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee, Telephone 615-741-7461.

For a copy of this notice of rulemaking hearing, contact: Carol Mace, 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37247-0508, Telephone 615-741-7461.



**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-24-5  
REVIEW OF HEALTH CARE FACILITY CONSTRUCTION PLANS AND SPECIFICATIONS**

1200-24-5-.04(1) Fees is amended by inserting a new subsection (1), so that as amended, the new rule shall read:

(1) The fee schedule for review of plans and specifications for construction shall be as specified in the following table:

Total Construction Cost:	Fee:
\$ 1.00 to \$ 50,000.	\$260.
\$ 50,001. to \$ 100,000.	\$260. for the first \$50,000., plus \$4.00 for each additional thousand or fraction thereof, to and including \$100,000.
\$ 100,001. to \$ 500,000.	\$360. for the first \$100,000., plus \$3.00 for each additional thousand or fraction thereof, to and including \$500,000.
\$ 500,001. and up	\$1,660. for the first \$500,000., plus \$2.00 for each additional thousand or fraction thereof, with a maximum of \$45,000.

*Authority:* T.C.A. §§4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216 and 68-11-804.

The notice of rulemaking set herein was properly filed in the Department of State on the 15th day of November, 2000. (11-08)

**TENNESSEE BOARD OF EXAMINERS FOR LAND SURVEYORS - 0820**

There will be a hearing before the Tennessee Board of Examiners for Land Surveyors to consider the promulgation of amendments of rules pursuant to Tenn. Code Ann., § 62-18-125(b). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 9:30 A.M. (CST) on the 18<sup>th</sup> day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department’s ADA Coordinator at 500 James Robertson Parkway, 5<sup>th</sup> Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Donna Moulder, Administrator, Tennessee Board of Examiners For Land Surveyors, 500 James Robertson Parkway, 2<sup>nd</sup> Floor, Davy Crockett Tower, Nashville, Tennessee 37243 at (615) 741-3611.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0820-1**

**RULES OF TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS**

Rule 0820-1-.05 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 as follows:

Application Fee .....	\$200.00
Friday Examination – Principles and Practice of Land Surveying (PLS).....	\$150.00
Tennessee Land Surveying (TLS).....	\$150.00
Saturday Examination - Fundamentals of Land Surveying (FLS).....	\$125.00
Professional Land Surveyor in Training (PLSIT) Examination (Application Fee).....	\$ 25.00
Certificate of Registration.....	\$100.00
Annual Renewal.....	\$140.00

*Authority:* T.C.A. §§62-18-105(d), 62-18-109 and 62-18-125.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2000. (11-44)

**BOARD OF OPTOMETRY - 1045**

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 1<sup>st</sup> day of February, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES**

Rule 1045-2-.05, Continuing Education, is amended by adding the following language as new subparagraph (1) (b) and renumbering the remaining subparagraphs accordingly:

- (1) (b) For those therapeutically certified optometrists who have received approval to use pharmaceutical agents by injection pursuant to subparagraph 1045-2-.07 (3) (d), current certification in cardiopulmonary resuscitation (CPR) is required.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-119.

Rule 1045-2-.07, Diagnostic and Therapeutic Certification, is amended by deleting subparagraph (3) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (d) shall read:

- (3) (d) No therapeutically certified optometrist shall use pharmaceutical agents by injection except to counter anaphylaxis until they have received approval from the board. The board will not approve the use of injections until the optometrist demonstrates to the board's satisfaction sufficient educational training and/or clinical training, and submits proof of current certification in cardiopulmonary resuscitation (CPR). The education must be obtained from board approved courses.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-102, and 63-8-112.

Rule 1045-2-.09, Ocular and Contact Lens Prescriptions and Office Equipment, is amended by adding the following language as new paragraphs (2), (3), (4), and (5), and renumbering the remaining paragraphs accordingly:

- (2) If a contact lens prescription has expired, the optometrist may require a new examination prior to his/her releasing, using, or verifying an expired prescription.
- (3) A contact lens prescription may not be refilled after the expiration date on the prescription or one (1) year from the date the prescription was originally issued, whichever comes first.
- (4) When an optometrist releases a contact lens patient's medical records as provided in T.C.A. § 63-2-101, such medical records are not considered to be a prescription.
- (5) When an optometrist provides a contact lens patient's medical records as provided in T.C.A. § 63-2-102, a reasonable fee may be charged for the service.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-8-112.

Rule 1045-2-.11, Scope of Practice, is amended by deleting paragraph (3) and its subparagraphs in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (6), so that as amended, the new paragraphs (3) and (6) shall read:

- (3) Universal Precautions for the Prevention of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

## (6) Eye Examination Requirements

- (a) All eye examinations performed by licensees shall include the professionally recognized components listed in subpart (3) (a) 2. (i) of rule 1045-2-.08 for spectacles and in subpart (3) (a) 2. (ii) of rule 1045-2-.08 for contact lenses.
- (b) All eye examinations performed by licensees shall be within a thirty-five (35) mile radius of the licensee's practice location on record with the Division of Health Related Boards.

*Authority:* T.C.A. §§4-5-202, 4-5-204, and 63-8-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2000. (11-06)

### **TENNESSEE BOARD OF RESPIRATORY CARE - 1330**

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of new rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-27-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 2nd day of February, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

### **SUBSTANCE OF PROPOSED RULES**

#### **AMENDMENTS**

Rule 1330-1-.15, Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting part (1) (a) 1. in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 1. shall read:

- (1) (a) 1. Procuring, attempting to procure, or renewing a license, or permit as provided by this part by means of bribery, or by intentional misrepresentation, or failure to properly complete a licensure or renewal application.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-27-104, and 63-27-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2000. (11-03)

**BOARD OF OCCUPATIONAL AND PHYSICAL THERAPY EXAMINERS' - 1150  
COMMITTEE OF PHYSICAL THERAPY**

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Physical Therapy to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, and 63-13-304. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 5<sup>th</sup> day of February, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 1150-1-.09, Renewal of License, is amended by deleting subparagraph (2) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (b) shall read

- (2) (b) Any individual who receives notice by certified mail of administrative revocation may, within sixty (60) days of the license's expiration date and pursuant to Rule 1150—1—.11, execute and file an affidavit of retirement which will effectively retire the license as of the date the affidavit of retirement was received in the Committee's administrative office.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-13-108, and 63-13-304, 63-13-308, 63-13-309.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000. (11-28)

**BOARD OF OCCUPATIONAL AND PHYSICAL THERAPY EXAMINERS' - 1150  
COMMITTEE OF OCCUPATIONAL THERAPY**

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Occupational Therapy to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-13-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 5<sup>th</sup> day of February, 2001.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 5<sup>th</sup> Avenue North, 1<sup>st</sup> Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 1150-2-.02, Scope of Practice, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Universal Precautions for the Prevention of HIV Transmission - The Committee adopts, as if fully set out herein, rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 63-13-108.

Rule 1150-2-.09, Renewal of Certificate, is amended by deleting subparagraph (2) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (b) shall read

- (2) (b) Any individual who receives notice by certified mail of administrative revocation may, within thirty (30) days of the certification's expiration date and pursuant to Rule 1150—2—.11, execute and file an affidavit of retirement which will effectively retire the certificate as of the date the affidavit of retirement was received in the Committee's administrative office.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-13-108, 63-13-204, and 63-13-215.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of November, 2000. (11-30)

## TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at Reelfoot Lake State Park, Airpark Inn, Tiptonville, Tennessee, commencing at 9:00 a.m. on the 25th day of January, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Donna Woodward, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204 and telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney 3, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

### SUBSTANCE OF PROPOSED RULES

#### AMENDMENT

Rule 1660-2-7-.18 Tellico Reservoir shall be amended by adding sub-paragraph (i), (j), (k) and (l) to paragraph two (2), to read as follows:

- (i) Site #9 - Poplar Creek located under the bridge that crosses the said creek on Tellico Parkway, Little Tennessee River Mile 4.4L
- (j) Site #10 - Clear Creek - located under the bridge on Tellico Parkway in Clear Creek Embayment, Little Tennessee River Mile 11.0L
- (k) Site #11 - Tellico River located at a metal culvert under SR360 (Vonore-Taqua Highway Bridge), Tellico River Mile 2.5R
- (l) Site #12 - Hammontree Branch located at a metal culvert under SR72, Little Tennessee River Mile 23.2R

**Authority:** T.C.A. §§70-1-206 and 69-10-209.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2000. (11-43)

## **WILDLIFE PROCLAMATIONS**

### **TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

#### **PROCLAMATION 00-20 STATEWIDE PROCLAMATION ON THE COMMERCIAL TAKING OF FISH AND TURTLES**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-206, 70-2-205, 70-4-107, and 70-4-119 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following regulations pertaining to the commercial taking of fish and turtles, hereinafter called commercial fishing.

Commercial fishing is hereby authorized in accordance with the following provisions, except where expressly forbidden by law. All commercial fishing gear must meet the specifications and be fished in the manner provided for in Sections I, II, III, IV, and V of this proclamation.

#### **SECTION I. WATERS OPEN TO COMMERCIAL FISHING**

For purposes of this proclamation, "river" means that body of water confined within the identifiable banks. At high river stage, oxbows, sloughs, and backwaters accessible by boat from the river are open to commercial fishing, but are considered private water and may be fished only with permission of the landowner.

#### **RIVERS**

The following are open year-round to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps unless otherwise specified.

1. CLINCH RIVER - fishing authorized only downstream from Melton Hill Dam. Gill and trammel nets prohibited.
2. EMORY RIVER - fishing authorized only downstream from the Harriman Bridge. Gill and trammel nets prohibited.
3. FORKED DEER RIVER - except that portion of the Middle Fork lying within the boundaries of the Chickasaw National Wildlife Refuge.
4. FRENCH BROAD RIVER
5. HATCHIE RIVER
6. HIWASSEE RIVER - fishing authorized only downstream from U.S. 11 Bridge (Charleston).
7. HOLSTON RIVER
8. LOOSAHATCHIE RIVER - fishing authorized only downstream from the New Raleigh-Millington Road Bridge.



9. MISSISSIPPI RIVER - (except that portion from the Mississippi-Tennessee line upstream to Mississippi River Mile 745, marked by the upper, or northern, tip of Hickman Bar, which is closed. This closure includes McKellar Lake and Wolf River embayment). Wardlow's Pocket and Wardlow's Pocket Chute (except those portions lying within the boundaries of the Chickasaw National Wildlife Refuge), Heathright Pocket, Cold Creek, Cold Creek Chute, lying within the boundaries of Anderson Tully WMA in Lauderdale County are open; all other ponds, lakes, arms, sloughs, bayous, and pockets within the WMA are closed.
10. NOLICHUCKY RIVER
11. OBION RIVER
12. WOLF RIVER - Only the section from Germantown Bridge upstream is open to commercial fishing. Gill nets and trammel nets are prohibited. The section upstream of Bateman Bridge in Fayette County is open for trotlines only.
13. CUMBERLAND RIVER - As listed in Section I. RESERVOIRS except from Cordell Hull Dam upstream are closed.
14. TENNESSEE RIVER - As listed in Section I. RESERVOIRS.
15. DUCK RIVER - That portion of the Duck River from its confluence with Blue Creek at approximate DRM 13.2 downstream to the Hustburg pipeline crossing is open year-round to trotlines, hoop nets, and slat baskets. The Duck River from DRM 4.0 downstream to the Hustburg pipeline crossing at approximate DRM 1.4 is open to gill nets and trammel nets from December 1 through January 15. The rest of Duck River downstream is open year-round to all legal commercial gear types. Duck River upstream from its confluence with Blue Creek is closed to all commercial fishing.

### RESERVOIRS

Group A: The following reservoirs are open year-round unless otherwise specified to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps.

1. BARKLEY - Commercial fishermen must contract with TWRA and abide by the contract provisions as determined by TWRA in order to commercial fish.
2. CHEATHAM - Commercial fishermen must contract with TWRA and abide by the contract provisions as determined by TWRA in order to commercial fish.
3. CHICKAMAUGA
4. DOUGLAS - Entanglement gear (gill and trammel nets) and hoop nets are prohibited above Point 14 from January through June. Entanglement gear (gill and trammel nets) is prohibited from the mouth to the headwaters of Indian, McGuire, Muddy and Flat Creeks from October through February.
5. GUNTERSVILLE - the taking and possessing of paddlefish is prohibited year-round.
6. NICKAJACK
7. PICKWICK
8. JOHN SEVIER

## 9. DAVY CROCKETT (Greene County)

Group B: The following reservoirs are open year-round except for specific restrictions as listed:

1. CHEROKEE - trammel nets and gill nets are prohibited. The taking and possession of blue catfish by commercial fishing methods is prohibited.
2. KENTUCKY - commercial fishing gear and sport fishing trotlines are prohibited in the New Johnsonville Steamplant Harbor and within 50 yards of the Danville Railroad Bridge dikes (approximate TRM 78.3).

The Duck River embayment from DRM 4.0 upstream to its confluence with Blue Creek at approximate DRM 13.2 is closed year-round to all commercial fishing gear types except trotlines, hoop nets, and slat baskets. The Duck River embayment from the Hustburg pipeline crossing at approximate DRM 1.4 upstream to DRM 4.0 is closed to commercial fishing with gill nets and trammel nets except from December 1 through January 15 each year.

Unattended entanglement type commercial fishing gear is prohibited from November 25 through March 15 in waters of the U.S. Fish and Wildlife Service Refuge located within the Big Sandy River Embayment and in all of the waters of the West Sandy Creek Arm of the Big Sandy River Embayment.

All commercial fishing gear except slat baskets and trotlines is prohibited in all creeks from 4 a.m. to 9 p.m. during the months of April and May; all commercial fishing gear is permitted in all creeks from 9 p.m. to 4 a.m. daily during the months of April and May, except that whip sets (the driving of fish into trammel and gill nets by the use of noise and disturbing the water) are not permitted in any creeks which have operating commercial docks.

## 3. REELFOOT

- (a) Commercial fishing for crappie is restricted to November 1 through February 28 annually and is permitted only under contract with the Tennessee Wildlife Resources Agency.
- (b) The taking of grass carp (*C. idella*) is prohibited.
- (c) Trammel, gill, hoop, and fyke nets are prohibited from November 1 through February 28 and April 15 through June 15 annually, except as provided in (a) above.

## 4. WATTS BAR - trammel and gill nets are prohibited.

## 5. OLDHICKORY

- (a) Trammel and gill nets are prohibited from Highway 231 upstream to Cordell Hull Dam and including the Caney Fork River.
- (b) Trammel and gill nets are prohibited from Highway 109 upstream to 231 except fishing of legal entanglement nets by whipset or trammeling method are permitted by contract with the Tennessee Wildlife Resources Agency.

## 6. FORT LOUDOUN - the possession of all species of catfish taken by commercial methods from Fort Loudoun Dam upstream to the confluence of the French Broad and Holston rivers is prohibited.

## SECTION II. LICENSE AND TAGGING REQUIREMENTS

A commercial fishing license is required by anyone engaging in or assisting anyone engaging in commercial fishing. Commercial fishermen must obtain a free Paddlefish Permit or a free Sturgeon Permit from TWRA prior to harvesting paddlefish and sturgeon from the waters of the State. A free Paddlefish and/or Sturgeon Permit may be obtained by written request. For species management purposes, TWRA may require Paddlefish and/or Sturgeon Permit Holders to affix sequentially numbered tags to harvested paddlefish and sturgeon. Commercial fishermen must obtain a free Turtle Permit from TWRA to harvest turtles from the waters of the State.

## SECTION III. GENERAL PROVISIONS

- A. Fish and turtles classified as endangered, threatened, or in need of management as proclaimed by the Wildlife Resources Commission may not be taken.
- B. The following fish species may be taken and sold commercially year-round unless otherwise restricted by this proclamation, other Tennessee Wildlife Resources Commission proclamations or rules, or Tennessee Code Annotated . Paddlefish and sturgeon or parts thereof shall not be taken during the period from April 24 through October 31, nor shall they be possessed during these periods unless they were previously taken during a legal taking season. This season shall be effective through April 23, 2003. Those persons possessing paddlefish or sturgeon or parts thereof during the periods from April 24 through October 31 must have in their possession bills of lading denoting pounds of flesh or eggs (or both if applicable) in their possession, name and address of supplier/fishermen, and date of harvest or date obtained. Paddlefish must be 32 inches, eye to fork length or blocked (with the tail remaining on the fish) a minimum of 24 inches from the fork of the tail to the flesh behind the gill arch (measured along the side of the fish), to be legal for harvest. In addition, both white and black crappie may be taken and sold commercially from Reelfoot Lake in accordance with regulations proclaimed by the Wildlife Resources Commission.

Common Name	Scientific Name
Shovelnose sturgeon	<i>Scaphirhynchus platyrhynchus</i> (Rafinesque)
Paddlefish	<i>Polyodon spathula</i> (Walbaum)
Spotted gar	<i>Lepisosteus oculatus</i> (Winchell)
Longnose gar	<i>Lepisosteus osseus</i> (Linnaeus)
Shortnose gar	<i>Lepisosteus platostomus</i> Rafinesque
Bowfin	<i>Amia calva</i> Linnaeus
Skipjack herring	<i>Alosa chrysochloris</i> (Rafinesque)
Gizzard shad	<i>Dorosoma cepedianum</i> (Lesueur)
Threadfin shad	<i>Dorosoma petenense</i> (Guenther)
Grass carp	<i>Ctenopharyngodon idella</i> (Valenciennes)
Common carp	<i>Cyprinus carpio</i> Linnaeus
Silver carp	<i>Hypophthalmichthys molitrix</i> (Valenciennes)
Bighead carp	<i>Hypophthalmichthys nobilis</i> (Richardson)
River carpsucker	<i>Carpionodes carpio</i> (Rafinesque)
Quillback	<i>Carpionodes cyprinus</i> (Lesueur)
White sucker	<i>Catostomus commersoni</i> (Lacepede)
Smallmouth buffalo	<i>Ictiobus bubalus</i> (Rafinesque)
Bigmouth buffalo	<i>Ictiobus cyprinellus</i> (Valenciennes)
Black buffalo	<i>Ictiobus niger</i> (Rafinesque)
Spotted sucker	<i>Minytrema melanops</i> (Rafinesque)
Silver redhorse	<i>Moxostoma anisurum</i> (Rafinesque)
Black redhorse	<i>Moxostoma duquesnei</i> (Lesueur)

Golden redbhorse	<i>Moxostoma erythrurum</i> (Rafinesque)
Black bullhead	<i>Ameiurus melas</i> (Rafinesque)
Yellow bullhead	<i>Ameiurus natalis</i> (Lesueur)
Brown bullhead	<i>Ameiurus nebulosus</i> (Lesueur)
+Blue catfish	<i>Ictalurus furcatus</i> (Lesueur)
Channel catfish	<i>Ictalurus punctatus</i> (Rafinesque)
Flathead catfish	<i>Pylodictis olivaris</i> (Rafinesque)
Freshwater drum	<i>Aplodinotus grunniens</i> Rafinesque
Yellow bass	<i>Morone mississippiensis</i> Jordan, Eigenmann
*White crappie	<i>Pomoxis annularis</i> Rafinesque
*Black crappie	<i>Pomoxis nigromaculatus</i> (Lesueur)

+ Harvest prohibited except from Reelfoot Lake under contract with TWRA.

\* The taking and possession of blue catfish from Cherokee Reservoir by commercial fishing methods is prohibited.

- C. Only the Common Snapping Turtle, *Chelydra serpentina serpentina*, with a carapace (upper shell) length of at least twelve inches, measured front to back, may be taken year-round and statewide without limit by any legal commercial fishing method.
- D. Only at Reelfoot Wildlife Management Area, all sizes and species of turtles except the box turtles and those covered in Item A. above may be taken by any legal commercial fishing method.
- E. Commercial fishing gear is prohibited within 1,000 yards downstream of any TVA or Corps of Engineers Dam, within 300 yards of any commercial boat dock or resort, or within 100 yards of the mouth of any stream, river, or inlet at any time. For purposes of this proclamation, wingwalls and lock walls are considered to be a part of the “dam”, and measurements will be made from their downstream end.
- F. No catfish less than 8 inches in length may be kept alive.
- G. Gill nets, trammel nets, turtle traps, and trotlines must be run at least once every 24 hour period. Other types of commercial fishing gear must be run at least once every 72 hour period.
- H. Hoop nets, fyke nets, trap nets, and pound nets with a mesh size of one (1) inch or smaller on the square may be fished only during the months of October, November, December, January, February, March, and April, except Reelfoot Lake which has special regulations, and the Mississippi River, which is open year-round.
- I. A fish seine may be used in private waters and in waters which are replenished by overflows from the Mississippi, Tennessee, Obion, Hatchie, Wolf, Loosahatchie, and Forked Deer rivers, but which during the dry season of the year have no outlet to these rivers. Fish seines as defined in this proclamation may be used in the dewatering areas of Kentucky Reservoir.
- J. No commercial fishing gear shall be set so as to extend more than three-quarters (3/4) across any stream, river, chute, or embayment.
- K. Prior to sale to an in-state wholesale fish dealer’s business or prior to being marketed out-of-state, paddlefish carcasses may not be altered in such a manner that the length of the fish may not be determined (measuring 32 inches from the eye to the fork in the tail or blocked a minimum of 24 inches from the fork in the tail to the flesh behind the gill arch, measured along the side of the fish).

- L. Commercially harvested paddlefish and sturgeon or parts thereof taken from the waters of the state and sold in-state must be marketed to a licensed wholesale fish dealer.

#### **SECTION IV. COMMERCIAL FISHING GEAR**

Legal gear types are trotlines, slat baskets, hoop nets, fyke nets, pound nets, trap nets, trammel nets, seines, turtle traps, and cast nets.

1. **Slat Basket**  
A slat basket is defined as a device used for taking of commercial fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats or splits which are placed lengthwise and so constructed that there must be a minimum of four openings in the catching area, each being at least 12" wide and 6" long.
2. **Hoop Net**  
A barrel shaped net made of synthetic cotton, linen, or nylon, and supported by hoops. A hoop net is also known as a barrel net, set net, funnel net, and trap net. One or more throats are attached inside the hoop structure. Legal mesh size of hoop nets is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for special restriction on 1" or smaller sizes.
3. **Fyke Net, Trap Net and Pound Net**  
A fyke net, also known as a wing net, is a hoop net to which as many as three (3) wings or leads may be attached. Trap nets or pound nets which have rectangular or box shaped traps shall also be legal by this definition. The wings or leads are equipped with floats and sinkers, and the webbing of the wings shall be constructed of twine not smaller than Number 7 in nylon or Number 9 in cotton or linen. The maximum length of each wing is 50 feet. The legal mesh size of fyke nets and wings or leads is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for restriction on 1" or smaller sizes.
4. **Trammel Net**  
A trammel net is defined as a net having three (3) webs (nets) hung to a single top (float) and bottom (lead) line. The two outside webs are called walling, and the inside web is called webbing. The inside webbing shall have a mesh size of not less than three (3) inches on the square and the outside walling shall have a mesh size of not less than four (4) inches on the square. The maximum mesh size of the outside walling shall consist of vertical ties or hobbles on each side of the webbing at six (6) foot intervals along the float and lead line. A net may not be hobbled to less than two thirds the height of the net. Maximum length of a trammel net is three hundred (300) yards. Trammel nets must be fished in a stationary manner except in the Mississippi River.
5. **Gill Net**  
A gill net is defined as a single net attached to float and lead lines with a minimum mesh size of three (3) inches on the square. The maximum length of a gill net is three hundred (300) yards. Gill nets must be fished in a stationary manner except in the Mississippi River.
6. **Fish Seine**  
A fish seine consists of a float and lead line to which netting is attached. The netting of the seine shall be constructed of twine not smaller than Number 7 nylon or synthetic fiber or Number 9 cotton or linen. The mesh size of seines shall be three (3) inches or larger on the square. Seines must be constantly attended, and may not be fished in a stationary manner.

7. **Turtle Traps**  
A turtle trap is defined as a trap made of linen or cotton netting, wood or cane slats or strips, wire, or other similar materials with a minimum mesh size of three (3) inches on the square. Such traps must be constructed in a way as to permit the escape of fish through the three (3) inch openings. Turtle traps as defined herein may only be used in waters open to commercial fishing. Turtle traps must be set so that a portion of the catching area is positioned above the water.
8. **Cast Net**  
A cast net is defined as a net having a maximum radius of ten (10) feet and a mesh size (square measure) of not less than one-fourth (3) inch and not greater than one (1) inch.
9. **Trotline**  
A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must be at least 24 inches apart.
10. **Dip Net**  
A dip net is a net constructed from natural or synthetic fibers which is attached to a frame that is attached to a pole. A dip net may only be used to commercially harvest turtles from Reelfoot Wildlife Management Area.

#### **SECTION V. REPORT REQUIREMENTS**

Commercial fishermen and wholesale fish dealers are required to submit reports to the Tennessee Wildlife Resources Agency on forms provided. Commercial fishermen and wholesale fish dealers must contact the Fisheries Management Division at (615) 781-6575 within 5 days upon purchasing a license and request the required forms. In addition to the required reports, Paddlefish and/or Sturgeon Permit Holders must provide samples, as instructed, to TWRA along with the tags if they were required. All Paddlefish and /or Sturgeon Permit holders must submit a monthly report to TWRA indicating the amount of paddlefish and sturgeon or parts thereof, including eggs (both if applicable) they have in their possession, amount sold and amount transferred or lost. Tags, when required, must remain on the paddlefish and sturgeon until the fish is in the final stage of processing. Commercial fishermen marketing out-of-state must provide TWRA with requested information on forms provided by TWRA as per the monthly reporting requirement. Commercial fishermen harvesting turtles or parts thereof from the state=s waters must provide requested information to TWRA.

Wholesale fish dealers, private individuals, and businesses importing paddlefish and sturgeon or parts thereof into Tennessee must have bills of laden denoting pounds of flesh or eggs (both if applicable), name and address of supplier, and date of import. Wholesale fish dealers, private individuals, and businesses importing or purchasing paddlefish and sturgeon and/or eggs for commercial purposes must provide requested information, updated monthly, and samples to TWRA. Wholesale fish dealers purchasing turtles or parts thereof must provide requested information to TWRA.

Wholesale fish dealers must maintain records available for audit of sales of paddlefish and sturgeon. These records must contain the quantity of fish or eggs sold and the buyer's address, including city, state, and country.

#### **SECTION VI. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 99-24, dated October 28, 1999. Proclamation 00-20 will be effective March 1, 2001.

Proclamation 00-20 received and recorded this 8th day of November, 2000. (11-23)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

**PROCLAMATION 00-23  
WILD TURKEY HUNTING SEASONS AND BAG LIMITS**

Pursuant to the authority granted by Tennessee Codes Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following hunting seasons and bag limits for wild turkey hunting effective March 1, 2001.

**SECTION I. GENERAL REGULATIONS**

A. Prohibited Acts

Use of electronic calls or live decoy. Possession of agricultural grain on one's person while turkey hunting. The use of any type of food to feed or attract wild turkeys on WMAs. Shooting or stalking turkeys from a boat in Shelby, Dyer, Tipton, Lauderdale, Haywood or Obion counties. Calling or attempting to call wild turkeys using any call to mimic the sounds made by a wild turkey is prohibited from March 1st to the opening day of the spring turkey hunts on all Wildlife Management Areas. A licensed turkey hunter who has filled his bag limit may accompany another turkey hunter (except on WMAs where prohibited) and assist him in calling, but may not have a gun or bow in his possession.

B. Bag and Possession Limits \*

Statewide - One bearded turkey per day, not to exceed three per season,  
(Includes turkeys taken on WMAs listed in Section III. D. below)

Wildlife Management Areas (Except those WMAs listed in Section III. D)  
One bearded turkey per hunt not to exceed two per season.

\*The total bag and possession limit shall not exceed four bearded turkeys per season on the statewide season and WMAs combined. Turkeys taken on Ft. Campbell and youth-only hunts are bonus birds and do not count toward the total season bag and possession limit.

C. Shooting Hours - Thirty (30) minutes before sunrise to sunset

D. Checking Stations - All hunters must check in at the area checking station prior to hunting on AEDC, Anderson-Tully, Catoosa, Cheatham, Chuck Swan, Laurel Hill, LBL, Natchez Trace, Prentice Cooper, Reelfoot and Shelby Forest Wildlife Management Areas. Hunters are also required to check out at the conclusion of their hunt. All turkeys harvested on the statewide hunt or on WMAs must be taken by the most reasonably direct route to the nearest county or WMA checking station on the day harvested. The permanent kill tag required for the legal possession will be issued at the checking station.

**SECTION II. STATEWIDE TURKEY HUNTING SEASONS AND BAG LIMIT (Exclusive of WMAs unless listed in Section III.D below)**

A. Counties Open - All counties of the state are open\*

\* Portions of the Cherokee Forest WMA in those counties north of the Great Smoky Mountains National Park are open to the statewide wild turkey season and bag limits. (See Section III. D. Below)

- B. Statewide Turkey Season Dates - March 31 through May 8, 2001
- C. Special Statewide Youth-Only Hunt (ages 10 through 16) - May 12, 2001  
Each youth must be accompanied by a non-hunting adult who is not required to have a license. Bag limit - one bearded bird

### SECTION III. WILDLIFE MANAGEMENT AREAS - SEASONS AND MISCELLANEOUS REGULATIONS

- A. Regular Managed Hunts (No Quota) Bag Limit - One bearded turkey per hunt not to exceed two turkeys per year. (See Section I.B.)

AEDC	Four hunts: March 31-April 2, 6-8, 20-22, 27-29.
Anderson-Tully	One 2-day hunt April 21-22. One 1-day Youth-Only hunt: May 12.
Catoosa	Six 3-day hunts: April 6-8, 13-15, 20-22, 24-26, 27-29, May 1-3.
Cheatham	Four hunts: March 31-April 2, 14-17, 19-22, 27-29. One 1-day Youth-Only hunt: April 7.
Ernest Rice	One 1-day Youth-Only hunt: May 12.
Fall Creek Falls	Two hunts: April 7-11, 12-15 (Archery Only).
Laurel Hill	Four hunts: March 31-April 2, 6-8, 14-17, 19-22.
LBL	Two 7-day hunts: April 23-29, April 30-May 6. Hunters harvesting a turkey on a LBL quota hunt (Sect. III.B) may not hunt on the April 23-29 hunt.
Moss Island	One 1-day Youth-Only hunt: May 12.
Prentice Cooper	Six 3-day hunts: April 3-5, 6-8, 10-12, 19-21, 24-26, 27-29
Shelby Forest	One 1-day Youth-Only hunt: May 12.
Williamsport	Two 3-day hunts: March 31-April 2, 19-21.
Wolf River	One 1-day Youth-Only hunt: May 12.

- B. Quota Managed Hunts (Quota turkey permit required) Bag Limit-One bearded turkey per hunt not to exceed two per year (See Sect. I.B.)

Anderson-Tully	One 2-day hunt: April 7-8. (50 hunter quota per hunt)
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Chuck Swan	Six 3-day hunts: March 29-31, 5-7, 12-14, 19-21, 26-28, May 3-5. (125 hunter quota per hunt). Hunting ends at noon each day, hunters must be at check station by 1pm
Ernest Rice	One 2-day hunt: April 21-22. (30 hunter quota)
LBL	Three 2-day hunts: April 7-8, 12-13, 21-22.
Moss Island	One 2-day hunt: April 21-22. (30 hunter quota)
Natchez Trace	Three 3-day hunts: April 6-8, 20-22, 27-29. 96 hunter quota per hunt- (48 south of I-40 only and 48 north of I-40 only). Hunters must sign in and out each day they hunt.
Oak Ridge	Two 2-day hunts: April 7-8, 28-29. Hunting ends at 2pm daily and successful hunters must be at the checking station by 3pm. (150 hunter quota per hunt) Scouting date for permit holders only - March 24th 6am to 2pm.
Reelfoot WMA and Black Bayou Refuge	One 3-day hunt: April 13-15 (20 Hunter quota)
Shelby Forest	Two 1-day hunts: April 7 (20 hunter quota) and April 21 (25 hunter quota).
Wolf River	Two 3-day hunts: April 6-8 (20 hunter quota) and April 20-22 (25 hunter quota)

C. Special Managed Hunts (No Quota)

Cherokee Forest and Foothills WMA	March 31 - May 8 (Non-quota permit required) All portions south of Great Smoky Mtns National Park are open. Bag limit - one bearded turkey per day not to exceed 2 per season. Turkey counts in WMA bag limit.  May 12, 2001 - Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt. Bag limit is one bearded bird and counts as a statewide bird.
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D. Wildlife Management Areas Open With Statewide Seasons and Bag Limits:

Alpine Mtn., Barkley (Units I and II), Bean Switch Refuge, Big Sandy, (including Gin Creek), Bridgestone/Firestone, Camden (Units I and II), Cedar Hill Swamp, Chickamauga, Chickasaw, Cheatham Lake, Cordell Hull, Cordell Hull Refuge, Cove Creek, Cumberland Springs, Doe Mtn., Duck River, Eagle Creek, Edgar Evins State Park, Flintville Hatchery, Gooch, Harmon's Creek, Haynes Bottom, Hop-in Refuge, Jarrell Switch, Jackson Swamp, Lick Creek, Lick Creek Bottoms, Maness Swamp Refuge, MTSU, Mt. Roosevelt, New Hope, Normandy, Obion River, Old Hickory (including Lock 5 Refuge), Pea Ridge, Percy Priest Unit II, Pickett, Royal Blue, Standing Stone, West Sandy, Tellico

Lake (except McGhee-Carson and Niles Ferry Units), Watts Bar, White Oak, and portions of the Cherokee Forest WMA listed in Section II (above) are open to coincide with the statewide season and bag limit.

**SECTION IV. NATIONAL WILDLIFE REFUGE HUNTS - FEDERAL PERMIT REQUIRED BAG LIMIT - ONE BEARDED TURKEY PER SEASON. ALL BIRDS COUNT IN WMA BAG LIMIT UNLESS OTHERWISE NOTED.**

Chickasaw NWR	Two 2-day hunts: April 7-8, 21-22 (25 hunter quota)
Lower Hatchie NWR	Two 2-day hunts: April 7-8, 21-22 (15 hunter quota)
Upper Hatchie NWR	One 10-day hunt: April 13-22
Tennessee NWR and Cross Creeks NWR	March 31 - May 8. May 12th - a Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt and bag limit.
Reelfoot NWR	Open to coincide with hunt on Reelfoot WMA (as listed in Section III.B. above). Hunter quota- Grassy Lake - 25, Long Point - 25.

**SECTION IV. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 99-23 dated Oct. 28, 1999 and Proclamation 00-2 dated Jan. 14, 2000.

Proclamation No. 00-23 received and recorded this 8th day of November, 2001. (11-24)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

**PROCLAMATION 00-24  
SPORT FISHING**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119 thereof, the Tennessee Wildlife Resources Commission proclaims the following regulations, effective March 1, 2001.

**SECTION I. ENDANGERED SPECIES, GENERAL SEASONS, CREEL AND POSSESSION LIMITS, AND MINIMUM LENGTHS**

**A. ENDANGERED SPECIES**

All fish identified as endangered or threatened or listed as in need of management as proclaimed by the Tennessee Wildlife Resources Commission may not be taken.

**B. GAME FISH SPECIES**

The season is open year-round on the following species, unless otherwise specified in this proclamation. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield. It shall also be unlawful to possess while afield any fish which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Rock bass	20	No length limit
Black bass (all species in combination)	5	No length limit
Except as listed below and in Section V, VI, and VII.		
All species from Reelfoot Lake, Reelfoot Watershed Lake #18, Gooch Unit E		15"
All species from Indian Boundary Lake	2	14"
Largemouth and smallmouth bass from Watauga Reservoir.		12"
Largemouth and spotted bass from Watts Bar, Chickamauga, and Nickajack Reservoirs		14"
Smallmouth bass from Chickamauga, Nickajack and Guntersville Reservoirs	1	18"
Largemouth bass and smallmouth bass from Cheatham, Fort Loudoun, Kentucky, Old Hickory, Tellico Reservoirs.		14"
Largemouth bass from Norris Lake		14"
Largemouth and smallmouth bass from Boone, Barkley, Center Hill, Cherokee, Percy Priest, Tims Ford, and Normandy Reservoirs		15"
Largemouth bass from Dale Hollow Reservoir		15"
Smallmouth bass from Dale Hollow Reservoir	2	16-21" slot*
*One smallmouth bass under 16" and one smallmouth bass over 21"		
Smallmouth bass from Pickwick Lake		14"
Smallmouth bass from Pigeon River (from the confluence with the French Broad River to North Carolina state line)	1	20"
Smallmouth bass from Norris.		14-18" slot*
*Only one smallmouth bass can be over 18"		
Spotted bass from Center Hill Reservoir		12"

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Spotted bass from Norris, Cherokee, Douglas, Fort Loudoun, Boone, Ft. Patrick Henry, South Holston, Melton Hill, Tellico, John Sevier, Davy Crockett, Watauga, Chilhowee, and Calderwood Reservoirs	15	

Note: For this proclamation, a spotted bass is defined as any black bass that has a patch of teeth on the central portion of the tongue.

\* See Special Definition Section for specific area descriptions of Cherokee, Norris, and Boone Reservoirs where size limits on smallmouth bass and largemouth bass apply.

Sauger except as listed below	10	15"
from Kentucky Lake		14"
Walleye except as listed below	5	16"
Walleye from Tellico Reservoir.		15" *
*only one walleye can be 24" or larger		
Walleye or sauger or in combination from Cherokee, Chilhowee, Douglas, Fort Loudoun, Melton Hill, South, Holston, Tellico, and Watauga Reservoirs and their tributaries	10	15"
Walleye or sauger or in combination from Norris Reservoir and its tributaries		15"
Walleye, sauger, saugeye or in combination from Normandy Reservoir and its tributaries	15	15"

Note: For this proclamation, any walleye-sauger hybrid (saugeye) is considered the same as a sauger.

Striped Bass or Cherokee Bass (Striped Bass x White Bass Hybrid), or in combination except as listed below	2	15"
On Norris Reservoir during April through October statewide regulations apply, but during November through March the creel and size limits are	1	24"
On Cordell Hull Reservoir.		32-42" slot*
*Only 1 striped or Cherokee bass per day can be over 42"		
On Cherokee Reservoir-see SECTION II. WATERS WITH CLOSED SEASONS		

Muskellunge	1	30"
Crappie (white and black combined) except as listed below.	30	10"
from Reelfoot Lake.		No limits
from private waters.		No length limit
from Mississippi River		No length limit
(river proper, sloughs and oxbows, the Hatchie, Loosahatchie, Forked Deer, Wolf, and Obion Rivers and their tributaries).		
from Norris Reservoir.	10	10"
from Dale Hollow, Center Hill, Douglas, Watauga, Cherokee, South Holston, Ft. Patrick Henry, John Sevier, Boone Reservoirs	15	10"
from Pickwick and Guntersville Reservoirs.		9"
from State Park Lakes, Indian Boundary Reservoir		No length limit

SPECIES	DAILY LIMIT	MINIMUM LENGTH
White bass	30	No length limit
Northern pike	No limits	
Yellow bass.	No limits	
Bluegill and other bream (except as listed below)	No limits	
from Norris Lake	30	No length limit
Pickereel.	No limits	
Yellow perch.	No limits	
Trout (combined daily creel limit-all trout) except as listed below	7	6" *
6" size limit is for brook trout only		
Lake trout.	2	
See Sections II, III, and IV for other trout regulations.		

C. NON-GAME FISH SPECIES

The season is open year-round unless otherwise specified in this proclamation. It shall be unlawful to possess while afield any fish which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

Non-game species except as listed below and in Section V, VI and VIII.		No limits
Catfish (blue and channel) when taken from Allen Branch Pond, and Indian Boundary Lake.	5	
Beech River Watershed Lakes	5	15"
Paddlefish*	1	30"
*May be harvested only from Cherokee Reservoir March 1 to March 15		

**SECTION II. WATERS WITH CLOSED SEASONS**

A. Land Between the Lakes Wildlife Management Area:

All waters open year-round, except the following:

- (a) Bear Creek Waterfowl Management Unit - closed to all fishing during duck hunting season.
- (b) Farm ponds - Open to fishing except those ponds posted as closed. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset.
- (c) Bards Lake - Trotlines and limblines prohibited. Jugs permitted from October 1 through March 21 with a limit of 10 per person.

B. Catoosa Wildlife Management Area:

All streams and ponds are open from April 1 through December 31, except on dates of managed big game and turkey hunts.

- C. Woods Reservoir: See Proclamation 74-17 for areas closed to fishing.
- D. Buffalo Creek (Grainger County): Closed to all fishing and minnow seining from the mill dam upstream.
- E. Doakes Pond (Norris Reservoir) - That portion of Norris Reservoir known as Doakes Pond (a sub-impoundment), located adjacent to Highway 63 approximately 9 miles NE of Lafollette, is closed to fishing.
- F. South Holston Reservoir: Closed to trout fishing December 1 through the last day of February.
- G. Center Hill Lake and Tributaries - Closed to taking or possessing of paddlefish.
- H. Clear Creek (tributary to the Clinch River, Anderson County) - closed to all fishing including minnow seining from Highway 441 upstream to the second dam (adjacent to the City of Norris water tower), as posted, from December 1 through March 31.
- I. All TWRA and USFWS hatchery ponds and raceways are closed to fishing year-round.
- J. Little Buffalo River, Laurel Hill WMA - Closed to all fishing from March 1 through April 30.
- K. South Holston Tailwater - Closed to all fishing from November 1 through January 31 in the following areas:
  - 1) Hickory Tree Bridge upstream to the confluence with Bottom Creek.
  - 2) Downstream point of Boy's Island (the first island downstream of Weaver Pike Bridge) upstream to the top of the first island above Webb Road Bridge.
- L. On Cherokee Reservoir, a closed fishing zone will be in effect from July 15 to September 15. This zone is enclosed by lines from the boat ramp at the south end of the dam across the lake to Point 2, from Point 2 to Point 3, and from Point 3 back across the lake to the TWRA boat ramp at the north end of the dam. All bank fishing will be open and the coves along the southeast shoreline will be open to boat fishing, but no fishing for any species will be allowed in the described zone from July 15 to September 15.

### **SECTION III. CHEROKEE WILDLIFE MANAGEMENT AREA - SPECIAL REGULATIONS**

- 1. Tellico Area - Daily Permit Required
  - . Tellico River from its confluence with Turkey Creek upstream to the Tennessee-North Carolina state line during the period March 15 through September 15
  - . Citico Creek upstream from its confluence with Little Citico Creek during the period March 15 through September 15
  - . Green Cove Pond (see Section III 6)
    - a. Fishing permitted year-round. Closed on Thursday and Friday, during the period March 15 through September 15 (except when national or state holidays fall on Thursday or Friday). From September 16 through March 14 fishing is allowed every day and no permit is required.
    - b. Daily limit - 7 trout; possession limit - 14 trout.
    - c. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset. The possession of fishing equipment and/or tackle is prohibited on stream banks except during legal fishing hours.
    - d. Each fisherman permitted only one rod or pole.

## 2. Wild Trout Streams

## GROUP I

- North River and tributaries
  - Bald River and tributaries
  - North Fork of Citico Creek and tributaries
  - South Fork of Citico Creek and tributaries
  - Laurel Fork and tributaries on Cherokee WMA beginning at the cable crossing 1/2 mile upstream from the USFS Dennis Cove Recreation Area and extending upstream
  - Gee Creek and tributaries in Polk County
  - Wolf Creek and tributaries in Polk County
  - Beaverdam Creek and tributaries from its confluence with Birch Branch downstream to Tank Hollow Road (USFS Rd. 6044)
  - Paint Creek and tributaries in Greene County-from USFS campground upstream to U.S. Forest Service Boundary line south of Highway 70 near Munday Gap.
- a. Fishing permitted year-round.
  - b. Daily limit - 3 trout; possession limit - 6 trout.
  - c. Size limit - Rainbow and brown trout.9 inches minimum  
Brook trout.6 inches minimum
  - d. Only single-hook artificial lures and flies are permitted. Use or possession of multiple hook lures, natural baits or scented preparations is prohibited. One single-hook lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
  - e. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset.
  - f. Each fisherman permitted only one rod or pole.

## GROUP II

- Rocky Fork Creek and tributaries on lands owned by SF Rocky Fork Holdings, Inc.
  - Higgins Creek and tributaries
  - Squibb Creek and tributaries
  - Sarvis Cove and tributaries
  - Dry Creek and tributaries (Greene County) upstream from the U.S. Forest Service boundary.
  - Sycamore Creek and tributaries
  - Rough Ridge Creek and tributaries
- a. Fishing permitted year-round.
  - b. Daily limit - 7 trout; No more than 3 may be brook trout.  
Possession limit - 14 trout; No more than 6 may be brook trout.
  - c. Size limit - Rainbow and brown trout.No minimum  
Brook trout.6 inches minimum
  - d. Only single-hook artificial lures and flies are permitted. Use or possession of multiple hook lures, natural baits or scented preparations is prohibited. One single-hook lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.

- e. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset.
  - f. Each fisherman permitted only one rod or pole.
3. Calderwood Reservoir
- a. Appropriate licenses from Tennessee or North Carolina are legal on the entire reservoir while fishing from a boat.
  - b. Fishing permitted year-round.
  - c. Size limit - none
  - d. Daily limit - 7 trout; possession limit - 14 trout
  - e. Trotlines and limblines prohibited.
4. Slickrock Creek
- That portion of Slickrock Creek which constitutes the boundary between the states of Tennessee and North Carolina.
  - a. Appropriate licenses from Tennessee or North Carolina are valid on this portion of Slickrock Creek.
  - b. Fishing permitted year-round.
  - c. Daily limit - 4 trout; possession limit - 8 trout.
  - d. Size limit - Rainbow, brown, and brook trout 7 inches minimum
  - e. Fishing permitted one-half hour before sunrise to one-half hour after sunset.
  - f. Use or possession of any bait other than single hook artificial lures is prohibited. The use of one dropper fly, having a single hook, which is separated from a legal lure by a length of line is permissible.
  - g. Each fisherman permitted only one rod or pole.
5. All other streams in the Cherokee Wildlife Management Area not listed above.
- a. Fishing permitted daily.
  - b. Daily limit - 7 trout; possession limit - 14 trout.
  - c. Each fisherman permitted only one rod or pole.
6. Green Cove Pond
- Fishing permitted year-round. Closed on Thursday and Friday (except when national or state holidays fall on Thursday or Friday) year-round.



- a. Fishing limited to handicapped individuals (see Section XVI), children under age 13 and adults 65 years of age and older.
- b. Tellico-Citico daily permit required year-round.
- c. Season is open year-round.
- d. Days closed - Thursday and Friday except open on all state and national holidays and scheduled special organized handicapped or children fishing events.
- e. Creel limit - 7 trout per day.
- f. Size limit - no restrictions.
- g. Hours open - one-half hour before sunrise to one-half hour after sunset.
- h. Bait restrictions - no minnows.

#### **SECTION IV. TROUT FISHING - SPECIAL REGULATIONS**

##### **A. Quality Trout Fishing Areas:**

The areas listed below are designated as quality trout fishing areas and all have regulations as described in 1 a., b., c., and d. below.

1. Hiwassee River: That portion of the Hiwassee River from the L & N Railroad Bridge upstream to the U.S. Forest Service's "Big Bend Parking Area".
  2. Watauga River: That portion of the Watauga River from Smalling Bridge downstream to the bridge at the town of Watauga.
  3. Little Buffalo River (Lawrence County): That portion of the Little Buffalo River within the Laurel Hill WMA from the Finnie Road crossing upstream (Closed to fishing from March 1 through April 30).
- a. Daily limit - 2 trout; Possession limit - 2 trout.
  - b. Size limit - 14" minimum.
  - c. Use or possession of any bait other than artificial lures is prohibited.
  - d. Trout less than 14" in length may not be possessed within quality trout fishing areas.

##### **B. City of Gatlinburg:**

###### **1. Waters Open:**

The taking of trout is permitted within the streams designated below and under the limits and during the times contained herein.

###### **a. General Streams:**

- West Prong Little Pigeon River from Park Boundary to Gnatty Branch except those sections set aside as Children's Streams.

- Dudley Creek from Park Boundary to West Prong Little Pigeon River, except those sections set aside as Children's Streams.
- Roaring Fork upstream to the Park Boundary.
- Leconte Creek from Painter Branch to West Prong Little Pigeon River.
- b. Children's Streams (may only be fished by children 12 and under)
  - Leconte Creek from Painters Branch upstream to Park Boundary.
  - West Prong Little Pigeon River from 100 yards above entrance of North Gatlinburg Park downstream to Gatlinburg By-pass Bridge.
  - Dudley Creek from Highway 441 Bridge to West Prong Little Pigeon River.

2. Season and Creel Limits:

- a. Fishing permitted year-round, except on Thursday, from 1/2 hour before official sunrise to 1/2 hour after official sunset.
  - 1). From December 1 through March 31:
    - a). Possession of any trout shall be prohibited.
    - b). All trout caught must be immediately returned to the water.
    - c). Use or possession of any bait other than single hook artificial flies, spinners, and spoons is prohibited. The use of one dropper fly having a single hook, which is separated from a legal lure by a length of line is permissible.
  - 2). From April 1 through November 30:
    - a). Daily creel limit shall be five (5) trout.
    - b). Total possession limit shall not exceed twice the daily creel limit
    - c). While fishing or when afield, possession of more than the daily creel limit shall be prohibited, regardless of whether the trout are fresh, stored in an ice chest, in a vehicle, or otherwise preserved.

b. Creel Limits:

—General Streams - The creel limit is five (5) trout per day.

—Children's Streams - The creel limit is two (2) per day for children twelve (12) and under.

c. Methods: Fishing is permitted with one hand-held rod and single hook only.

d. Daily Fees:

1. In addition to the State licensing requirement, all Tennessee Residents ages 9 through 64 must possess a special Gatlinburg daily permit. The permit fee is \$2.00; provided that a non-resident may purchase a 1-day all inclusive permit, in lieu of the normal license/permit combination for a total fee of \$10.00. Non-residents under the age of 9 are exempt from the Gatlinburg daily permit.
- C. Dale Hollow Reservoir:
1. April 1-October 31 - Daily creel limit .7 trout  
No more than 2 may be lake trout no size limit
  2. November 1-March 31 - Daily creel limit .2 trout  
Minimum size limit .22 inches
- D. Horse Creek (Greene County):
- That portion from the U.S. Forest Service boundary line upstream to the junction of Squibb Creek.  
Creel limit: 7 per day except from May 1-September 30 when the limit is 2 per day.
- E. South Fork of the Holston River:
- From the South Holston Dam to Highway 37 Bridge at Bluff City  
- 16-22 inch slot (protected length range), - 7 trout, only 1 of which can over 22 inches.
- F. Delayed Harvest Areas: In the areas listed below, the harvest or possession of trout will be prohibited during the catch-and-release season. During the catch-and-release season, only artificial lures are permitted and the use or possession of any bait or scented preparation is prohibited.
1. Paint Creek-Paint Creek Campground downstream to mouth at French Broad River. Effective October 1, 2001. Catch-and-release season-October 1 through the last day of February.
  2. Tellico River-Mouth of Turkey Creek downstream to the Oosterneck Creek Recreation Area. Effective October 1, 2001. Catch-and-release season will be from October 1 through March 14.
- G. Little Jacob Creek in Sullivan County: only 3 trout in daily creel limit may be brook trout.
- H. Left Prong Hampton Creek in Carter County: only 3 trout in daily creel limit may be brook trout.

#### **SECTION V. WILDLIFE AGENCY LAKES AND WILDLIFE MANAGEMENT AREAS**

- A. Lakes in the Wildlife Agency Lakes Management System are: Coy Gaither-Bedford, Browns Creek, Carroll, Davy Crockett (Humboldt), Garrett, Graham, Herb Parsons, Laurel Hill, Maples Creek, Marrowbone, VFW, Whiteville, Williamsport, Glenn Springs, and Reelfoot-Indian Creek Watershed Lakes.
- B. Seasons, Creel Limits, Size Limits, and Hours of Operation
1. Unless noted in Section II. Wildlife Agency Lakes are open year-round. Lakes will be open 1/2 hour before sunrise and close 1/2 hour after sunset. Except Garrett Lake is open 24 hours.
  2. Creel and Size Limits:

Statewide limits apply except as listed below:

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Catfish (blue and channel combined).	5	
from Bedford, Laurel Hill, Williamsport Public Fishing Lakes	5	14"
Black bass (all species)		
from Williamsport Public Fishing Lakes.	1	20"
from Glenn Springs, Marrowbone, Browns Creek, Bedford	5	14-18" slot*
*only 1 bass per day greater than 18"		
from Whiteville Lake.	5	14"
from Lake Graham, Herb Parsons, Laurel Hill	10	14-18" slot *
*only 1 bass per day greater than 18"		
from Davy Crockett Lake.	10	
Bluegill and Redear Sunfish (combined):		
from Laurel Hill, Bedford Lakes, Williamsport Public Fishing Lakes.	20	

- C. Williamsport Public Fishing Lakes :  
Whipporwill Lake is ?youth fishing? only. Only youths 16 and under and an accompanying adult may fish.
- D. Laurel Hill Lake: The embayment above the road that lies between the concession building and the campground is a ?Youth fishing? only fishing area. Youths 16 and under may fish.
- E. Methods for Wildlife Agency Lakes:
  - 1. Except for jug fishing as listed below, only rods and reels, poles, and hand-held lines may be used.
  - 2. Jug fishing will be permitted daily from April 1 through September 30 except Saturday, Sunday, Memorial Day, Independence Day, and Labor Day, and daily from October 1 through March 31. Jugs are limited to ten (10) per boat. Jugs must be marked with the owner’s name and address.
- F. Bridgestone/Firestone Centennial Wilderness WMA Ponds are designated as youth fishing ponds. Fishing is permitted for youths 16 years of age or younger who are accompanied by a non-fishing adult (18 years of age or older). Youths are limited to using one (1) pole or rod while fishing. The ponds will be open on Tuesdays, Thursdays, and Saturdays only, beginning with Tennessee’s Free Fishing Day through Labor Day.

Daily creel limits:       Bluegill - 10  
                                   Channel Catfish - 5  
                                   Largemouth bass - 0 (catch and release only)

**SECTION VI. DEPARTMENT OF ENVIRONMENT AND CONSERVATION MANAGED LAKES**

Statewide fishing regulations apply on lakes managed by the Tennessee Department of Environment and Conservation except as listed below:

Black bass from the following lakes must be a minimum of 15":

—Falling Water (Burgess Falls) Lake, Burgess Falls Natural Area

- Lake Lajoie, Chickasaw State Park
- Lake Placid, Chickasaw State Park
- Byrd Lake, Cumberland Mountain State Park
- Lake Lindsey, David Crockett State Park
- Fall Creek Lake, Fall Creek Falls State Park
- Sullivan’s Pond, Ft. Pillow State Historic Area
- Indian Mt. “B” Lake, Indian Mountain State Park
- Acorn Lake, Montgomery Bell State Park
- Creech Hollow Lake, Montgomery Bell State Park
- Kelly (Standing Stone) Lake, Standing Stone State Park

Black bass from:

- Big Ridge Lake, Big Ridge State Park, must be a minimum of 14"

Black bass fishing on the following lakes is restricted to catch-and-release only; i.e., all black bass caught must be immediately released unharmed:

- Lake Woodhaven, Montgomery Bell State Park

Channel or blue catfish or in combination:

- Daily creel limit of 5.

Crappie (white and black combined)

- Daily creel limit of 30
- No minimum size limit

## **SECTION VII. SPECIAL REGULATIONS ON LAKES CONTROLLED BY NON-STATE GOVERNMENTAL AGENCIES**

1. Casper Lake (Shelby County) - The minimum size limit on black bass is 16" and the daily creel limit is
2. New Lake (Lewisburg) - Black bass: Creel limit-5; minimum length -13". Open 1/2 hour before sunrise to 1/2 hour after sunset. Only rods and reels and cane poles are permitted.

## **SECTION VIII. MINNOWS**

1. The catching of minnows for the purpose of sale is prohibited in Cannon, Lincoln, Macon, Moore, Smith, Sumner, and Trousdale counties. The possession limit for minnows taken from streams in the above counties is 150 in Cannon, Macon, Smith Sumner, and Trousdale, 250 in Lincoln and Moore. It shall be unlawful to sell, take for sale, or offer for sale hornyhead minnows (stonerollers) in Carter, Unicoi, Washington, Johnson, Sullivan, and Morgan counties.
2. Minnow traps and seines as defined below may be used to catch minnows subject to all laws and regulations governing the catching of minnows.
  - a. A minnow trap is hereby defined as a device used for the purpose of catching minnows. The mouth opening or openings shall not exceed one and one-half (1 1/2") inches in diameter.

- b. A minnow seine is hereby defined as a net having a mesh size no greater than three-eighths (3/8) of an inch on the square, and no greater than ten (10) feet in length.

## SECTION IX. TURTLES

### A. Species, Creel and Size Limits, and Seasons:

1. Only the Common Snapping Turtle - *Chelydra serpentina serpentina* - may be legally taken.
2. All turtles listed as endangered or threatened or listed as "In Need of Management" as proclaimed by the Tennessee Wildlife Resources Commission may not be taken, and include:

Bog Turtle - *Clemmys muhlenbergi*

Alligator Snapping Turtle - *Macrolemys temmincki*

Cumberland Slider - *Trachemys (Pseudemys) scripta troosti*

3. The season is open year-round.
4. The daily limit is 5. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield.
5. The minimum legal length for the common snapping turtle is 12 inches. For purposes of this proclamation, the length of a turtle is determined by measuring the carapace (upper shell) from front to back.
6. Turtles may be taken by all legal sport fishing methods except archery and spear-guns.

Additionally, sport fishermen may take turtles by the use of up to three hoop nets having a minimum mesh size of three-inches (3") on the square in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, McNairy, Madison, Obion, Perry, Shelby, Stewart, Tipton, and Weakley counties. Each net must be marked with the name and address of the owner. Each net must be set so that a portion of the catch area is above the water.

7. It shall be unlawful to possess while afield any turtle which has been altered to the extent that its species and/or length cannot be determined.
8. At the Reelfoot Wildlife Management Area, all sizes and species of turtles except box turtles and those in Item 2. above may be taken year-round with a daily limit of 5 by legal sport fishing methods.

## SECTION X. GIGGING

- A. Gigging: The taking of fish by means of a hand-held pole or spear with a tip consisting of two or more sharpened and barbed points.
- B. Season open year-round except as noted below.
- C. Waters Open: All waters not closed in Paragraph D. below or elsewhere in this proclamation.
- D. Waters Closed:

1. All streams in the following counties closed year-round:

—Bedford	—Lawrence	—Maury
—Giles	—Lewis	—Wayne
—Hickman	—Marshall	

2. East Fork Obey River and tributaries closed January 1 through April 30.
3. Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
4. Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Point 11) on the Elk River arm of Watauga Reservoir closed from December 1 through May 31.
5. Paddlefish may be harvested from March 1-March 15.

E. Species which may be taken and creel limits:

1. Non-game species - no limit (except that only 1 paddlefish equal to or larger than 30 inches may be harvested).

**SECTION XI. GRABBLING, GRAB HOOKING, SNAGGING, TUBBING, ARCHERY, SPEAR-GUN FISHING, DIPPING, AND CAST NETTING**

A. Season open year-round except as noted below.

B. All waters open except:

1. Within 100 yards below dams except at Pickwick the closed area will extend downstream to the first moorage cell located across from the boat launching ramp. At John Sevier Steam Plant the discharge channel is also closed. Dipping and cast netting are excluded from this restriction.
2. Those areas closed to fishing listed in Section II.
3. All waters closed by separate proclamation.
4. Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30. Cast netting is excluded from this restriction.
5. The Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Point 11) on the Elk River arm of Watauga Reservoir closed from December 1 through May 31. Cast netting is excluded from this restriction.
6. Snagging prohibited year-round on the South Holston tailwater (from South Holston Dam to the headwaters of Boone Reservoir).

C. Species which may be taken:

1. Non-game species - no limit. Paddlefish may be harvested from March 1 through March 15, with a daily creel limit of 1 fish equal to or larger than 30 inches.

D. Methods Defined:

1. Grabbling: The taking of fishes with the hands.
2. Grab Hooking: The taking of fishes using one or more single, double, or treble hooks fastened directly to a pole or rod in such a manner that they are not separated from pole or rod by a length of line.
3. Snagging: The taking of fishes using one or more single, double, or treble hooks which are manipulated or jerked through the water in such a manner as to impale or hook fishes.
4. Tubbing: The taking of fishes using a tub or like device which has neither top nor bottom.
5. Archery: The taking of fishes using long, recurve, and compound bows using arrows with barbed points; Crossbows are prohibited.
6. Spear-gun fishing: The taking of fishes using a spear-gun.
7. Dipping: Taking of fishes using a dip net.
8. Cast Netting: The taking of fishes by throwing and retrieving a cast net having a maximum radius of 10 feet and with a mesh size (square measure) of not less than one-fourth (1/4") and not greater than one (1) inch.

## **SECTION XII. SLAT BASKETS**

1. A slat basket is defined as a device used for taking non-game fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats which are placed lengthwise and so constructed that there must be a minimum of four (4) openings in the catching area, each being at least 1 1/2" wide and 6" long.
2. Slat baskets as defined above and properly tagged shall be legal in all public waters except TWRA Managed Lakes.
3. Season open year-round, except that paddlefish may only be harvested from March 1-15.
4. Only non-game fish may be taken. No limit (except that only 1 paddlefish equal to or larger than 30 inches may be harvested).
5. Only one basket tag will be issued to an individual.
6. Possession or use of more than one slat basket is prohibited.

## **SECTION XIII. TROTLINES, LIMBLINES, AND JUGS**

- A. Season open year-round except as noted in Section II. and Section V. and except that paddlefish may only be taken from March 1 through March 15.
- B. All waters open except as follows:



1. Sport fishing trotlines, limblines, and jugs prohibited within 1,000 yards below any TVA or Corps of Engineers dam.
  2. Allen Branch Pond, Indian Boundary Lake, and Chilhowee (McKamy Pond) in Cherokee Wildlife Management Area closed to jug fishing and trotlines. Indian Boundary Lake is also closed to limblines.
  3. Trotlines prohibited in the Beech River Watershed Development Authority lakes, in the New Johnsonville Steamplant Harbor, and within 50 yards of the Danville Railroad Bridge dikes.
  4. Bards Lake on Land Between the Lakes closed to trotlines and limblines.
  5. Trotlines, limblines, and jugs prohibited on Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
- C. Methods Defined:
1. Trotline: A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must not be closer than 24 inches.
  2. Limblining: The use of one or more hooks on a single line suspended from a tree or shrub limb, or from a pole embedded in or braced on the bank.
  3. Jug Fishing: The use of a hook connected by a length of line to a floating buoy (jug).
- D. All species may be taken.
- E. Creel limit on game fish same as statewide; non-game species - no limit (except that only 1 paddlefish equal to or larger than 30 inches may be harvested).
- F. Other Restrictions:
1. Sport fishing trotlines, limblines, and jugs must be tagged and/or marked with the owner's name and address. On trotlines, the tag must be placed on the line within 5 feet of the bank, if the trotline is attached to a bank. On floating trotlines the information shall be marked on the floats. In all other situations, the tag must be placed within 5 feet of either end. On limblines, the tag must be affixed to the line above the water level.
  2. Sport fishing trotlines, limblines, and jugs must be run at least once each day.
  3. Sport fishermen limited to 50 jugs or blocks each except New Johnsonville Steam Plant Harbor and Bards Lake, where the limit is ten (10) jugs or blocks per sport fisherman and on Beech River Watershed Development Authority Lakes where the limit is twenty (20) jugs or blocks per boat. On Bards Lake, jugs are permitted only from October 1 through March 21.
  4. Sport fishing trotlines, limblines, and jugs not fished according to these regulations are subject to be removed by Agency personnel.

#### **SECTION XIV. SHAD TRAWLING**

- A. Season: Year-round.
- B. Waters Open - All waters except within 1,000 yards below any dam.
- C. Method Defined: The taking of threadfin or gizzard shad using a trawl having a mesh size no larger than 1 inch, a hoop diameter no larger than 48 inches, and a net length no longer than 72 inches.
- D. Shad collected cannot be sold.

#### SECTION XV. SPECIAL RESTRICTIONS

- A. Reelfoot Lake. During April and May, the use of gasoline engines to propel boats in selected areas of Reelfoot Lake as posted by TWRA signs is prohibited.
- B. Center Hill Reservoir
  - 1. On the upper end of Center Hill reservoir including Caney Fork River beginning at Rock Island State Park boat launching ramp and extending upstream to Great Falls Dam, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. No more than 3 rods and reels or poles may be used.
- C. Dale Hollow Reservoir
  - 1. Compton boat ramp upstream to Hwy. 52 bridge on the East Fork Obey River arm, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30.
  - 2. No more than 3 rods and reels or poles per boat angler and 6 rods and reels or poles per bank angler may be used.

#### SECTION XVI. SPECIAL DEFINITIONS

- A. Game Fish:

The following fish are designated as game fish:

Family - Centrarchidae

All fish in the family Centrarchidae, including those listed below and all hybrids, are designated as game fish.

Largemouth bass	<i>Micropterus salmoides (Lacepede)</i>
Smallmouth bass	<i>Micropterus dolomieu Lacepede</i>
Spotted bass	<i>Micropterus punctulatus (Rafinesque)</i>
Redeye bass	<i>Micropterus coosae Hubbs and Bailey</i>

White crappie	<i>Pomoxis annularis</i>
Black crappie	<i>Pomoxis nigromaculatus (Lesueur)</i>

Rock bass	<i>Ambloplites rupestris (Rafinesque)</i>
Warmouth	<i>Lepomis gulosus (Cuvier)</i>

Bluegill	<i>Lepomis macrochirus Rafinesque</i>
Redear sunfish	<i>Lepomis microlophus (Gunther)</i>
Longear sunfish	<i>Lepomis megalotis (Rafinesque)</i>
Green sunfish	<i>Lepomis cyanellus Rafinesque</i>
Flier	<i>Centrarchus macropterus (Lacepede)</i>
Redbreast sunfish	<i>Lepomis auritus (Linnaeus)</i>
Pumpkinseed	<i>Lepomis gibbosus (Linnaeus)</i>
Orangespotted sunfish	<i>Lepomis humilis (Girard)</i>
Family - Percichthyidae	
Striped bass	<i>Morone saxatilis (Walbaum)</i>
Cherokee Bass (Striped bass-White bass hybrid)	<i>Morone sp.</i>
White bass	<i>Morone chrysops (Rafinesque)</i>
Yellow bass	<i>Morone mississippiensis (Jordan and Eigenmann)</i>
Family - Percidae	
Walleye	<i>Stizostedion vitreum (Mitchill)</i>
Sauger	<i>Stizostedion canadense (Smith)</i>
Walleye-Sauger hybrid (Saugeye)	<i>Stizostedion sp.</i>
Yellow perch	<i>Perca flavescens (Mitchill)</i>
Family - Esocidae	
All fish in the family Esocidae, including those listed below and all hybrids, are designated as game fish.	
Muskellunge	<i>Esox masquinongy Mitchill</i>
Northern pike	<i>Esox lucius Linnaeus</i>
Chain pickerel	<i>Esox niger Lesueur</i>
Grass pickerel	<i>Esox americanus Lesueur</i>
Family - Salmonidae	
All fish in the family Salmonidae, including those listed below and all hybrids, are designated as game fish.	
Rainbow trout	<i>Oncorhynchus mykiss</i>
Brown trout	<i>Salmo trutta Linnaeus</i>
Brook trout	<i>Salvelinus fontinalis (Mitchill)</i>
Lake trout	<i>Salvelinus namaycush (Walbaum)</i>
Ohrid trout	<i>Salmo letnica</i>

B. Non-Game Species:

All species except those listed as game fish and those proclaimed by the TWRC to be endangered, threatened, or in need of management.

C. Hooks Defined:

Hooks are defined as follows:

Single hook - 1 point

Double hook - 2 points

Treble hook - 3 points

D. The use of rods and reels, poles, hand-held lines, and other devices and methods described in this proclamation are the only legal means of sport fishing.

E. Norris Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the Highway 25E Bridge

on the Clinch River Arm and upstream to Gap Creek on the Powell River Arm.

- F. Boone Reservoir:  
For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the 11E Bridge at Bluff City on the South Fork Holston River Arm and upstream to the new Austin Springs Bridge on the Watauga River.
- G. Cherokee Reservoir:  
For purpose of size restrictions on largemouth and smallmouth bass, shall extend upstream to the John Sevier Dam.
- H. Handicapped - any person who is mentally impaired or physically impaired (including blindness) because of injury or disease, congenital or acquired, which permanently renders him/her so severely disabled as to be unable to move without aid of crutches or a wheelchair, or a person who has 80% permanent impairment of a hand or arm as determined by a physician using the standards outlined in the "Guide to Evaluations of Permanent Rating", published by the AMA or other acceptable rating system.

#### **SECTION XVII. SHOOTING FISH AND TURTLES**

Shooting fish and turtles with firearms is prohibited.

#### **SECTION XVIII. SALE OF FISH AND TURTLES**

It is illegal to sell or offer for sale fish and turtles taken under authority of this proclamation.

#### **SECTION XIX. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 99-22, dated December 14, 1999.

Proclamation 00-24 received and recorded this 8th day of November, 2000. (11-25)

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