

# TAAAR



**May 15, 2001**  
**Volume 27, Number 5**

**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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## 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.

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**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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**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**

**ANNOUNCEMENT OF FORMULARATE 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 11.50 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 June, 2001 is 9.71 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 5.71 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 April 2001. 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.

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-01	April 4, 2001	<b>0080</b> <b>Dept of</b> <b>Agriculture</b> Division of Animal Industries	Emergency Rules		<i>Chapter 0080-2-1</i> <i>Health Requirements For Admission And Transportation Of Livestock And Poultry</i> 0080-2-1-.17 Restrictions on Shipments From Known Foot-and-Mouth Disease Countries or Regions	Patricia Clark General Counsel Dept of Agriculture P. O. Box 40627 Nashville, TN 37204 615-837-5093	April 4, 2001 through Sept 16, 2001
04-04	April 10, 2001	<b>0460</b> <b>Bd of Dentistry</b>	Rulemaking Hearing Rules	New rule  Amendments	<i>Chapter 0460-1</i> <i>General Rules</i> 0460-1-.07 Working Interviews 0460-1-.03 Board Officers, Consultant, Records and Meetings 0460-1-.04 Application Review, Approval, Denial and Interviews 0460-1-.06 Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas  <i>Chapter 0460-2</i> <i>Rules Governing The Practice Of Dentistry</i> 0460-2-.03 Educational Licensure Process 0460-2-.06 Specialty Certification 0460-2-.08 Licensure Renewal  <i>Chapter 0460-3</i> <i>Rules Governing The Practice Of Dental Hygienists</i> 0460-3-.01 Licensure Process 0460-3-.02 Criteria Approval Licensure Process 0460-3-.07 Licensure Renewal  <i>Chapter 0460-4</i> <i>Rules Governing The Practice Of Dental Assistants</i> 0460-4-.06 Registration Renewal	Peggy Depriest OGC 26 <sup>th</sup> Fl Snodgrass Twr 312 8 <sup>th</sup> Ave N Nashville TN 37247-0120 615-741-1611	June 24, 2001
04-05	April 11, 2001	<b>0400</b> <b>Environment and Conservation</b> Division of Water Supply	Proposed Rules	Amendments	<i>Chapter 1200-4-6</i> <i>Underground Injection Control</i> 1200-4-6-.02 Definitions 1200-4-6-.03 Injection Prohibited 1200-4-6-.04 Prevention of Pollution of Ground Water 1200-4-6-.05 Classification of Ground Water and Water Quality Standards 1200-4-6-.06 Classification of Injection Wells	Alan Lieserson OGC Snodgrass Twr 312 8 <sup>th</sup> Ave N Nashville TN 37243-1548 615-532-0125	June 25, 2001



ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-05, cont.					1200-4-6-.07 Permit Required 1200-4-6-.08 Authorized by Permit for Injection Wells not Authorized by Rule 1200-4-6-.09 General Standards and Methods 1200-4-6-.10 Class I Wells 1200-4-6-.11 Class II Wells 1200-4-6-.12 Class III Wells 1200-4-6-.13 Class IV Wells 1200-4-6-.14 Class V 1200-4-6-.15 Fees for Class II Injection Wells 1200-4-6-.16 Fees for Class III Injection Wells 1200-4-6-.17 Fees for Class V Injection Wells 1200-4-6-.18 Bonds for Permitted Wells 1200-4-6-.19	John Fitzgerald OGC 26th Fl Snodgrass TN Twr 312 8th Ave. N Nashville, TN 37247-0120 615-741-1611	June 30, 2001
04-06	April 17, 2001	<b>0470</b> <b>Board of</b> <b>Dietitian/Nutrito</b> <b>nist Examiners</b>	Rulemaking Hearing Rules	Amendment	Chapter 0470-1 <i>General Rules and Regulations</i> 0470-1-.09 Renewal License	Alan Lieserson OGC Snodgrass Twr 312 8th Ave N Nashville TN 37243-1548 615-532-0125	June 25, 2001
04-07	April 11, 2001	<b>0400</b> <b>Environment and</b> <b>Conservation</b> Division of Radiological Health	Rulemaking Hearing Rules	Amendment	Chapter 1200-2-10 <i>Licensing and Registration</i> 1200-2-10-.34 Supplemental Fees for Calendar Year 2001	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	June 25, 2001
04-16	April 30, 2001	<b>0520</b> <b>State Board of</b> <b>Education</b>	Proposed Rule	Amendments	Chapter 0520-1-3 <i>Minimum Requirements for the Approval of Public</i> <i>Schools</i> 0520-1-3-.08 Pupil Personnel Services, Requirement G	Karen Weeks State Board of Education 9th Fl, A Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	June 25, 2001
04-17	April 30, 2001	<b>0520</b> <b>State Board of</b> <b>Education</b>	Proposed Rule	Amendments	Chapter 0520-2-4 <i>Licensure</i> 0520-2-4-.01 General Information and Regulations	Karen Weeks State Board of Education 9th Fl, A Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	June 25, 2001

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

Applications will be heard at the June 27, 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 April 1, 2001. 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**

The Heritage  
North of the Intersection of Concord Road and  
Knox Valley Drive  
Brentwood (Williamson Co.), TN 37027  
Frank Grace – (615) — 252-2477  
CN0102-011

The establishment of a thirty (30) bed Medicare certified skilled nursing facility as part of a continuing care retirement community (CCRC) to be located at the intersection of Concord Road and Knox Valley Drive, in Brentwood, Tennessee. \$ 3,693,000.00

River Park Health Care Center  
Dickerson Pike, North of Skyline Drive  
Nashville (Davidson Co.), TN 37207  
Joe Garafola – (615) — 228-3494  
CN0103-015

The relocation of a seventy-eight (78) bed nursing home from the existing site at 1306 Katie Avenue in Nashville, Tennessee, to a lot on the west side of Dickerson Pike just north of Oak Valley Drive in Nashville, Tennessee. \$ 3,500,000.00

## NAME AND ADDRESS

## DESCRIPTION

The Cardiac Center of Johnson City  
3 Professional Park Drive  
Johnson City (Washington Co.), TN 37604  
Kelly Crepps – (423)—431-6052  
CN0103-016

The establishment of a freestanding outpatient cardiac catheterization facility, acquisition of cardiac catheterization equipment, and the initiation of cardiac catheterization services at 3 Professional Park Drive, Johnson City, Washington County, Tennessee.  
\$ 2,239,406.00

CMC – Saint Thomas Heart Institute  
421 South Main Street  
Crossville (Cumberland Co.), TN 38555  
Thomas Blankenship – (615)—222-2112  
CN0103-017

The initiation of cardiac catheterization services and the acquisition of cardiac catheterization equipment. The fixed adult cardiac catheterization facility will be located within Cumberland Medical Center, 421 South Main Street, Crossville, Tennessee. Upon the completion of this project, Cumberland Medical Center will discontinue its current mobile catheterization service.  
\$ 1,812,500.00

Jackson-Madison County General Hospital  
District at West Tennessee Imaging Center  
Coatsland Drive North of Skyline Drive  
Jackson (Madison Co.), TN 38301  
James Allen – (901)-425-6734  
CN0103-018

The initiation of Positron Emission Tomography (PET) services and the acquisition of a PET scanner in the West Tennessee Imaging Center, located on Coatsland Drive, north of Skyline Drive, in Jackson, Tennessee. The project will include the renovation of 1,535 square feet of existing space.  
\$ 3,375,000.00

Smyrna-LaVergne Medical Center  
Exit 66B @ 1-24 Smyrna (Rutherford Co.), TN 37167 Jerry  
Taylor – (615)-726-1200  
CN0103-020

The establishment of a 75-bed hospital, initiation of magnetic resonance imaging (MRI) and cardiac catheterization services, and the acquisition of a (MRI) scanner and cardiac catheterization equipment. The proposed hospital will be located at a site near the intersection of Interstate 24 and Exit 66B, East Sam Ridley Parkway, Rutherford County, in Smyrna, Tennessee.  
\$ 76,000,000.00

Semmes-Murphey Neurologic & Spine Institute  
1211 Union Avenue  
Memphis (Shelby Co.), TN 38104  
William West – (615)-259-1450  
CN0103-021

The acquisition of a magnetic resonance imaging (MRI) scanner and the initiation of MRI services at the Semmes-Murphey Neurologic & Spine Institute located at 1211 Union Avenue in Memphis, Tennessee.  
\$ 2,225,100.00

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## **EMERGENCY RULES**

### **DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF ANIMAL INDUSTRIES**

#### **STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES**

Pursuant to T.C.A. § 4-5-208, the Tennessee Department of Agriculture is promulgating emergency rules in response to the threat of foot-and-mouth disease incursion to the United States.

The Tennessee Department of Agriculture, after research and communication with United States Department of Agriculture and livestock industry representatives in other states, has determined that there is the potential for an immediate threat to animal health and the economic interests of Tennessee's livestock industry due to the current worldwide outbreak of a highly contagious strain of foot-and-mouth disease. Due to the highly contagious nature of this disease and the multibillion-dollar impact it's incursion would have on our livestock industry, it is critical that the Tennessee Department of Agriculture put rules into effect more expeditiously than is possible without the use of emergency rules.

For copies of the entire text of the proposed amendments, contact: Dr. Ronald B. Wilson, State Veterinarian, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5120.

Ronald B. Wilson, D.V.M.  
State Veterinarian  
State of Tennessee

## **EMERGENCY RULES OF THE DEPARTMENT OF AGRICULTURE DIVISION OF ANIMAL INDUSTRIES**

### **CHAPTER 0080-2-1 HEALTH REQUIREMENTS FOR ADMISSION AND TRANSPORTATION OF LIVESTOCK AND POULTRY**

#### **NEW RULE**

#### **TABLE OF CONTENTS**

0080-2-1-.17 Restrictions on Shipments From Known Foot-and-Mouth Disease Countries or Regions

#### **0080-2-1-.17 RESTRICTIONS ON SHIPMENTS FROM KNOWN FOOT-AND-MOUTH DISEASE COUNTRIES OR REGIONS**

- (1) Importation of animals from a known foot-and-mouth disease country or region as designated by the United States

Department of Agriculture shall be restricted as follows:

- (a) No cloven-hoofed animals from a known foot-and-mouth disease country or region will be allowed to enter Tennessee, either by direct or indirect shipment, until six (6) months after the Office of International Epizootics (OIE) and United States Department of Agriculture (USDA), Animal Plant Health Inspection Service, Veterinary Services have declared a country free from foot-and-mouth disease.
- (b) Horses and other Equidae, originating from a known foot-and-mouth disease country either by direct or indirect shipment, shall enter Tennessee only after meeting USDA importation regulations and then only under quarantine along with their tack and conveyance. A prior entry permit shall be obtained during normal working hours from the office of the State Veterinarian. No entry shall be permitted for shipment to premises where there are any cloven-hoofed animals. Compliance with post entry requirements as established by the State Veterinarian must be met before the quarantine is removed.
- (c) Any companion or exotic animals originating from a known foot-and-mouth disease country, shipped either directly or indirectly into Tennessee, shall enter Tennessee only after meeting USDA import regulations and then only under a quarantine which includes any items, housing, or private conveyance accompanying them. A prior entry permit shall be obtained from the office of the State Veterinarian during scheduled working hours. No entry shall be permitted for shipments to premises where there are any cloven-hoofed animals. Compliance with post entry requirements as established by the State Veterinarian must be met before the quarantine is removed.

**Authority:** T.C.A. §§44-2-102 and 4-3-203.

The emergency rules set out herein were properly filed in the Department of State 4th day of April, 2001, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day 16th day of September, 2001. (04-01)

## **PROPOSED RULES**

### **STATE BOARD OF EDUCATION - 0520**

#### **CHAPTER 0520-1-3 MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS**

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment 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 rules are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8<sup>th</sup> Floor – William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Karen Weeks, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed rule is as follows:

#### **AMENDMENTS**

Subparagraph (a) of paragraph (2) of rule 0520-1-3-.08 Pupil Personnel Services, Requirement G is amended by deleting the part in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (a) Each local school system shall have a written policy providing for a physical examination of every child entering school for the first time. A doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse shall perform this examination. No child shall be admitted to school without proof of immunization except those who are exempt by statute as provided in T.C.A. 49-6-5001.

Subparagraph (b) of paragraph (2) of rule 0520-1-3-.08 Pupil Personnel Services, Requirement G is amended by deleting the part in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) Each local school system shall have a written policy providing for a physical examination of every student participating in interscholastic athletics. A doctor of medicine, osteopathic physician, physician assistant, or certified nurse practitioner shall perform this examination.

**Authority:** T.C.A. §49-1-302.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of April, 2001, 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 28th day of August, 2001. (04-16)

**STATE BOARD OF EDUCATION - 0520****CHAPTER 0520-2-4  
LICENSURE**

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment 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 rules are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8<sup>th</sup> Floor – William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Karen Weeks, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed rule is as follows:

**AMENDMENTS**

Paragraph (15) of Rule 0520-2-4-.01 General Information and Regulations is amended by adding a new subparagraph (f) so that as amended the subparagraph shall read:

- (f) Individuals who seek or hold a license on a professional school service personnel license shall be granted the advanced degree designation for salary purposes if the degree is related to the area of endorsement and an institution of higher education with an approved program recommends the individual for licensure.

**Authority:** T.C.A. §49-1-302 and 49-5-108.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of April, 2001, 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 28th day of August, 2001. (04-17)



## **PUBLIC NECESSITY RULES**

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

- 1200 - Department of Health, Tennessee Cancer Registry, Public Necessity Rules implementing the program operated by the Cancer Reporting System administered by the Tennessee Cancer Registry of the Tennessee Department of Health, chapter Chapter 1200-7-2 Cancer Reporting System, 3 T.A.R. (March 2001) - Filed February 22, 2001; effective through August 6, 2001. (02-10)

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## **RULEMAKING HEARINGS**

### **DEPARTMENT OF CHILDREN'S SERVICES - 0250 FOSTER CARE SERVICES**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room 7A on the 7<sup>th</sup> Floor of the Cordell Hull Building located at 436 6<sup>th</sup> Avenue North, Nashville, Tennessee, 37243, at 3:00 p.m. on the 12<sup>th</sup> day of July, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7<sup>th</sup> floor of the Cordell Hull Building, 436 6<sup>th</sup> Avenue North, Nashville, Tennessee, 37243, 615-741-9175.

For a copy of this notice of rulemaking hearing, contact: Patsy D. Napier, Program Manager, Foster Care Services, Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue, North, Nashville, TN 37243; (615) 532-5615.

## **SUBSTANCE OF PROPOSED RULES**

### **RULEMAKING HEARING RULES OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES FOSTER CARE SERVICES**

#### **CHAPTER 0250-7-1 KINSHIP FOSTER CARE**

#### **NEW RULES TABLE OF CONTENTS**

0250-7-1-.01	Purpose of Chapter	0250-7-1-.03	Procedures for Kinship Foster Care
0250-7-1-.02	Definitions for Purposes of This Chapter	0250-7-1-.04	Confidentiality

#### **0250-7-1-.01 PURPOSE OF CHAPTER**

- (1) The purpose of this chapter is to provide, in compliance with Tennessee Code Annotated § 37-2-414, procedures for the selection, training, and implementation of the Kinship Foster Care Program within the Department of Children's Services.

**Authority:** T.C.A. § 37-2-414, T. C. A. § 37-1-413.

**0250-7-1-.02 DEFINITIONS FOR PURPOSES OF THIS CHAPTER**

- (1) Department - Refers to the Department of Children's Services.
- (2) Foster Parent - Any person with whom a child in the care, custody or guardianship of the department is placed for temporary or long term care, but shall not include any persons caring for a child if an adoption placement contract has been signed
- (3) Kinship Foster Care - The provision, by relatives, of full time, nurturing care for children in the department's custody. It is considered a form of out-of-home placement and a type of approved foster care placement.
- (4) Kinship Foster Parent - A foster parent who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care in a private residence for children who are related to the kinship foster parent by birth, marriage, or adoption, and who have been removed from their homes as a result of a Child Protective Services investigation or a court adjudication of dependency and neglect, unruly or delinquent, and are in the care and custody of the department.
- (5) Case Manager (CM)- Department of Children's Services staff person assigned to work with the Department of Children's Services foster homes and the children placed in those homes. It is the responsibility of the CM to insure that the child's needs are met, and the foster home is operating in compliance with the Department of Children's Services policy and procedures.
- (6) Team Leader - The front-line supervisor who is responsible for the supervision of staff working with the foster homes and children.
- (7) Team Coordinator - The Department of Children's Services program staff person with the responsibility for staff on one or more teams and with a variety of program responsibility.
- (8) Regional Administrator - The chief official of the Department of Children's Services in a group of counties, or an urban area that comprise a region. The Regional Administrator is responsible for the administration of program as well as the personnel and fiscal issues.
- (9) Parents as Tender Healers (PATH) - Training that consists of group preparation for foster and adoptive parents. It consists of 30 hours of pre-service training and group work, including training on the developmental needs of children and the importance of working cooperatively with the birth parents.
- (10) Degree of Relationship - Relatives must be within the first, second, or third degree of a parent or step-parent of the child. The relatives may be related through blood, marriage, or adoption.

**Authority:** T.C.A. § 36-1-102 (21), T.C.A. § 37-1-414(a)(1), T. C. A. § 37-1-414(a)(2), T. C. A. § 37-1-414(b)(3)(A).

**0250-7-1-.03 PROCEDURES FOR KINSHIP FOSTER CARE**

- (1) A child must be found to be dependent and neglected by the current caregiver, or unruly or delinquent, pursuant to T. C. A. § 37-1-102 in order for the relative to qualify for the Kinship Foster Care Program.
- (2) Degree of Relationship. Kinship foster parent applicants must be within the first, second, or third degree of a parent or step-parent, through blood, marriage or adoption. Applicable relatives include the following:
  - (a) Grandparents of the child

- (b) Great-grandparents of the child
  - (c) Aunts and uncles of the child
  - (d) Age-appropriate siblings of the child
  - (e) Great-aunts and great-uncles of the child
  - (f) Age-appropriate first cousins of the child
  - (g) Great-great-grandparents of the child
- (3) Initial Assessment Activities. Within three working days of a child coming into custody, a diligent search must be made for any absent parent and/or relative of the child. If relatives are available and willing to be a resource and desire to participate in the Kinship Foster Care Program, the department must assess their suitability and ability to care for the child. The assigned Case Manager must:
- (a) Visit the home of the relative applying to become a kinship foster parent.
  - (b) Meet with all relevant family members and assess current family function, along with the history of the family functioning.
  - (c) Assess the relationship between the relative and the birth family of the foster child to be placed.
  - (d) Assess the relationship between the foster child and the relative desiring to become the kinship foster parent.
  - (e) Assess the ability and desire of the relative to protect and ensure the child's health, safety, and well-being.
  - (f) Assess the discipline methods used in the relative's home.
  - (g) Assess the need for financial assistance or service provision to enable the prospective kinship foster parent to care for the child and shall include the availability of public assistance for the family.
- (4) Kinship Foster Care Approval Process. All kinship foster care applicants must meet certain requirements in order to be approved as a kinship foster home.
- (a) Each relative who is approved as a kinship foster parent must be twenty-one (21) years old or older, except if the spouse or partner of the relative is twenty-one (21) years of age or older and living in the home, and the relative is between eighteen (18) and twenty-one (21) years of age, the department may waive the age requirement. This waiver requires the written approval of the regional administrator of the department.
  - (b) Criminal record checks and fingerprinting of the prospective foster parent and of any adult residing in the prospective foster parent's home will be required. Approval shall not be given if the criminal records check reveals a felony conviction of any type of child abuse or neglect; spouse abuse; a crime against children (including child pornography); or a violent crime, including but not limited to, rape, sexual assault or homicide. Additionally, approval shall be denied if the criminal records check reveals a conviction for physical assault, battery, or a drug-related offense with the last five (5) years. Approval shall not be granted if there are pending criminal charges or allegations against the prospective foster

parent or any adult residing in the prospective foster parent's home until such time as the charges or allegations are resolved.

- (c) The Department's Child Protective Services record will be checked, and any applicant with a validated or founded CPS complaint against any member of the household will not be approved as a kinship foster home.
  - (d) Each approved kinship foster parent shall be in good mental and physical health to the extent that they have the ability to provide good care.
  - (e) Each kinship foster parent applicant must supply copies of their birth certificate, marriage certificate, divorce decrees (if applicable), and proof of income.
  - (f) Each kinship foster parent applicant will be required to attend the PATH training for DCS foster parents. Under specific circumstances, the training may be waived for any foster parents, including kinship foster parents.
  - (g) Telephones, smoke detectors and fire extinguishers will be required in each kinship foster home.
  - (h) Each approved kinship foster parent must sign a statement agreeing not to use physical punishment or allow the use of physical punishment by any other person in the home. Each approved kinship foster home must be in compliance with the department's discipline policy as outlined in the Administrative Policies and Procedures, Chapter 16.
  - (i) Each approved kinship foster home is subject to the same policies and procedures as any other DCS foster home, as outlined in the Administrative Policies and Procedures, Chapter 16, except the age requirements and the training requirements as outlined above. The regional administrator of the department shall also have the discretion of waiving the requirements on sleeping areas and storage space in kinship foster homes.
- (5) Kinship Foster Care Homes Reimbursement
- (a) Upon receiving approval as a kinship foster home, foster care board payments will be made based on the age of the foster child, and consistent with the full foster care board payments currently in effect and outlined in the Administrative Policies and Procedures, Chapter 16 and the Foster Parent Handbook. No payment will be made by the department until all application forms are in, the training completed, and the entire record reviewed and approved by the appropriate supervisor.
  - (b) A child placement contract between the department and the kinship foster parent will be signed by the kinship foster parent and the case manager. This contract will outline the responsibilities of the kinship foster parent as well as the department, and will provide a specific amount of board payment. Kinship foster parents will be expected to provide the foster child with a personal allowance if age-appropriate.
- (6) Permanency Planning in Kinship Foster Care
- (a) Kinship foster parents shall be involved in the development of the Permanency Plan. Kinship foster parents will be given an explanation of their role and responsibilities, along with those of the child's parents and the department in working to secure a stable, safe and permanent home for the child.
  - (b) Kinship foster parents shall be given notice of, and the opportunity to be heard at, all review hearings in order that the court will be able to hear information about the child from the individual (s) who has ongoing, continuous care of the child.

- (c) Kinship foster parents must be able and willing to work with the child's parents, the department, and the courts by cooperating with visitation between the child and their parents, supporting the implementation of the permanency goal, and providing transportation, as needed.

*Authority:* T. C. A. § 37-2-412, T. C. A. § 37-2-414

#### **0250-7-1-.04 CONFIDENTIALITY OF INFORMATION**

- (1) Any information received, pursuant to this part, by the Department of Children's Services or by the kinship foster parent shall not be disclosed. Disclosure of this information is a Class A misdemeanor.

*Authority:* T. C. A. § 37-2-414

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of April, 2001. (04-02)

### **DEPARTMENT OF CHILDREN'S SERVICES - 0250 SOCIAL SERVICES DIVISION**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in the Conference Room B, 7<sup>th</sup> floor, Cordell Hull Building, located at 436 6<sup>th</sup> Avenue North, Nashville, TN 37243, at 1:30 p.m. on the 2nd day of August, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7<sup>th</sup> floor of the Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Anita Cowan, 436 6<sup>th</sup> Avenue North, 8<sup>th</sup> Floor, Nashville, TN 37243-1290; (615) 532-5627.

### **SUBSTANCE OF PROPOSED RULES**

#### **CHAPTER 0250-7-2 ADOPTION ASSISTANCE AND DEFERRED ADOPTION ASSISTANCE PROCEDURES**

#### **NEW RULES**

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### **0250-7-2-.01 PURPOSE OF CHAPTER**

- (1) The purpose of this chapter is to provide, in compliance with T.C.A. § 37-5-106, the procedures for receiving Adoption Assistance and Deferred Adoption Assistance and the services which shall be provided under these programs.

*Authority:* T.C.A. § 36-1-201, 37-5-105, 37-5-106, and 37-5-112.

### **0250-7-2-.02 DEFINITIONS FOR THE PURPOSE OF THIS CHAPTER**

- (1) Adoption Assistance - Assistance provided to adoptive parent(s) to assist in removing barriers to the adoption of a child who has special needs. This assistance may be in the form of financial assistance or provision of needed services for the child, or a combination of both.
- (2) Adoption Assistance Agreement - A binding contract on a form developed by the Department between the adoptive parent(s) and the Department which outlines the type of assistance which will be provided and the terms under which services are provided.
- (3) Adoption Assistance Application - A form developed by the Department in which the adoptive parent(s) file a request for Adoption Assistance and the services they are requesting for a child.
- (4) Adoption Assistance Revision - Any change made in the Adoption Assistance Agreement after the initial approval.
- (5) Adoption Assistance Renewal - The required annual renewal of the Adoption Assistance Agreement completed on forms developed by the Department.
- (6) Adoptive parent(s) - The person(s) who have been made the legal parent(s) of a child by the entry of an Order of Adoption under provisions of law.
- (7) Adoptive Placement – The point at which a child is placed with a family for the purpose of adoption and is formalized through the signing of an adoptive placement contract.
- (8) Deferred Adoption Assistance - The approval of future adoption assistance for a child who, at the time of adoptive placement does not meet the criteria of a special needs child, but who has certain high risk factors which may result in the child developing medical/ psychological problems in the future.
- (9) Department - The Tennessee Department of Children’s Services or any of its divisions or units.
- (10) Finalized Adoption – An adoption in which an Order of Adoption has been issued by a court of jurisdiction.
- (11) IV-E - Federal funding for services provided to a child receiving Adoption Assistance.
- (12) Licensed Clinical Social Worker - An individual who holds a license as an independent practitioner from the board of social worker certification and licensure pursuant to T.C.A. 63-23-101 et seq., and, in addition, is licensed by the Department to provide foster care placement services and adoption placement services.



- (13) Non-recurring expenses - Fees for services provided for the home study by a licensed agency, placement, supervision of the placement by a licensed agency, or court and legal costs specifically related to the finalization of the adoption.
- (14) Permanency Plan - The plan of care for a child in foster care is a written document which includes the following:
  - (a) A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement. The plan should describe efforts to place the child in the least restrictive (family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child.
  - (b) The plan should provide assurance that the child receives proper care and that services are provided to the child, and foster parents or providers in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child and parents under the plan.
  - (c) To the extent available and accessible, the plan must include health and education information regarding the child.
  - (d) Where appropriate, for a child age 16 or over, the plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.
  - (e) The plan must address the visitation between the child and their parents, child support and possible consequences for failure to comply with the plan.
- (15) Placed Together - A sibling group or three or more children who are placed with the same family for the purpose of adoption at the same time and adoption placement contracts for all children are signed at the same time.
- (16) Special Needs - Criteria established and defined by the Department which may result in barriers to a particular child's placement for adoption.
- (17) State contracted treatment facility - A licensed treatment facility which holds a contract with the Department to provide residential and treatment services to children in the custody of the state.
- (18) State Funding - The provision of financial assistance or services through state funds for children receiving Adoption Assistance.
- (19) Support - Contribution by the adoptive parent(s) to a child receiving Adoption Assistance residing out of their home. This may be in the form of financial, emotional or other types of support as outlined in the permanency plan for a child in foster care.
- (20) Tennessee Licensed Child Placing Agency - Any agency operating under a license to place children for adoption issued by the Department.
- (21) Usual and Customary Rate - The rate is determined by obtaining three projections of cost for a particular service within the geographic area or locale where the child and family reside.

**Authority:** T.C.A. § 37-5-105, 37-5-106, and 37-5-112.

**0250-7-2-.03 ADOPTION ASSISTANCE**

- (1) Eligibility For Child:
  - (a) Children eligible for Adoption Assistance must meet the definition of special needs as defined by Department policy at the time of adoptive placement.
  - (b) A child who has been in the custody of the Department of a Tennessee Licensed Child Placing Agency (public or non-profit) immediately preceding adoptive placement or a child who was in the legal custody of the Department or a Tennessee Licensed Child Placing Agency immediately prior to the entry of an order of adoption or a child in the full guardianship of the Department or a Tennessee Licensed Child placing Agency (public or non-profit) may be eligible for Adoption Assistance. "Immediately preceding adoptive placement" applies to situations when the child was surrendered directly to the adoptive parents while the child was in the custody of the agency or when termination of parental rights has occurred as a result of petition for termination/adoption filed by prospective adoptive parents while the child was in custody. This does not apply to those cases where termination of parental rights and adoption are pursued by the prospective adoptive parents after a transfer of custody.
  - (c) The State must determine that the child cannot or should not be returned to the home of his or her parents. The child must be legally free for adoption in order to enter into the Adoption Assistance agreement.
  - (d) Reasonable efforts to identify an adoptive family for a child without Adoption Assistance will be made in accordance with federal regulations and based on the child's needs and best interest.
- (2) Eligibility of Adoptive Parents:
  - (a) The adoptive parent(s) must fulfill all adoption requirements as evidenced by an approved home study completed by the Department or other licensed child placing agency in accordance with TCA 36-1-102 (29 & 30).
  - (b) The resources of the adoptive parent(s) are sufficient to meet their own needs.
  - (c) The adoptive parent(s) must submit an application in the format the Department requests.
  - (d) Provided the adoptive parents(s) meet all applicable requirements, the Department will not consider the adoptive parent(s) residence in initiating/continuing Adoption Assistance.
- (3) Funding:
  - (a) The Department must determine the child's categorical eligibility for Title IV-E (TANF or SSI) funding or state funding at the time the initial Adoption Assistance Application is approved.
  - (b) All cases involving children whose foster care was funded under Title IV-E will be eligible for Title IV-E Adoption Assistance. All cases involving children whose foster care was funded under state funding will be eligible for state funding.
  - (c) A child must meet one of the following categories to be eligible for IV-E funding in Adoption Assistance.
    1. The child was eligible for AFDC at the time of removal or would have been eligible at the time of removal if she/he had been living with a specified relative. A judicial determination was made in the order to

remove the child that to remain in the home would be contrary to the child's welfare. And the child would continue to be AFDC-eligible (except for his removal from the home) in the month the adoption petition was filed.

2. The child meets all the requirements of the Title XVI Supplemental Security Income Program at the time adoption proceedings are initiated.
  3. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and the child.
  4. The child was eligible for Adoption Assistance in a previous adoption where the adoptive parent(s) died or the adoption was dissolved.
- (d) Title IV-E Adoption Assistance includes the following categories of services:
1. Monthly payment;
  2. TennCare/Medicaid;
  3. Social Services Block Grant (SSBG) eligibility for SSBG services;
  4. payments for non-recurring expenses related to the finalization of the adoption.
- (4) State funded Adoption Assistance includes the following categories of services:
- (a) Monthly payment;
  - (b) payments for medical/psychological services for significant conditions that existed before placement/finalization;
  - (c) TennCare/Medicaid;
  - (d) payment for transportation necessary to obtain medical treatment when a child must travel 150 miles or more one way from home to receive medical treatment.
  - (e) payment for one-time clothing allowance for sibling groups of 3 or more who are being placed together. Clothing allowance payments are not made to foster parents adopting foster children who were in foster care in their homes.
  - (f) Social Services Block Grant (SSBG) eligibility for SSBG services.
- (5) If the IV-E Adoption Assistance case is closed due to the death of the adoptive parent(s), the child continues to be eligible for IV-E funding only when the child re-enters foster care and/or is replaced for purpose of adoption by the Department or a licensed child placing agency and the child continues to meet the special needs requirement for Adoption Assistance.
- (6) Negotiating Parameters of Adoption Assistance
- (a) At the time of adoptive placement the adoptive parent(s) and the Department of Children's Services must negotiate services and benefits to be provided through Adoption Assistance.

- (b) The Adoption Assistance Application must be signed and approved by the Department of Children's Services' Team Coordinator prior to finalization of the adoption.
  - (c) No financial payment/services can be authorized prior to the last signature date on the Adoption Assistance Agreement.
  - (d) Only those services related to the child's documented special needs may be included in Adoption Assistance. DCS will only provide the benefits provided in the Agreement.
  - (e) Non medical special services may not be included in Adoption Assistance Agreements created on or after October 1, 1997. Services included in Agreements prior to October 1, 1997 will continue to be provided in accordance with those Agreements.
  - (f) The monthly payment for Adoption Assistance must be less than the current Tennessee Department of Children's Services foster care board rate based on the age of the child regardless of the type foster care placement or funding source.
  - (g) An extraordinary monthly payment may be negotiated based on the required level of parenting of the child and approved at the sole discretion of the Department of Children's Services. This must be approved in writing by the State Adoptions Services Program Director.
  - (h) The Adoption Assistance Agreement must be re-negotiated and renewed annually.
  - (i) The Adoption Assistance Agreement may be revised, at any time, based on changes in the documented special needs and resources of the child or to reflect other changes in eligibility factors within the limitations of the Adoption Assistance Agreement.
  - (j) Adoption Assistance does not provide for any educational services, burial expenses, routine medical care, or services for cosmetic purposes only.
- (7) Responsibilities of Adoptive Parents
- (a) The adoptive parent(s) will avail themselves to any resources that will assist in meeting the needs of the child. If family medical insurance coverage is available to adoptive parent(s), the adoptive parent(s) must ensure the child's coverage under this family medical plan.
  - (b) The adoptive parent(s) must notify DCS of the following:
    - 1. The child is no longer in the home;
    - 2. the child is no longer in the custody or guardianship of the adoptive parent(s);
    - 3. changes in resources such as insurance, SSA, VA, SSI, and/or benefits received on behalf of the child;
    - 4. change of address;
    - 5. the child has his/her eighteenth and twenty-first birthday;
    - 6. the child is no longer in school.
  - (c) The adoptive parent(s) will be responsible for contributing to the support of a child who continues to be in their legal custody residing outside their home.

- (d) In the event the child enters state custody or the custody of a private child caring agency, the adoptive parent(s) will be responsible for contributing support as ordered by the court, negotiated with the child caring agency or as agreed to in the Permanency Plan.
  - (e) Failure of the adoptive parent(s) to contribute support to the care of the child in out-of-home placements will result in the termination of the Adoption Assistance Agreement.
  - (f) Adoptive parent(s) are responsible for completing the Adoption Assistance Renewal Affidavit and returning the form to the DCS Office within the specified time frame.
  - (g) Adoptive parent(s) are responsible for applying for TennCare coverage (or Medicaid coverage if the family lives outside of Tennessee).
- (8) Applications
- (a) An application for Adoption Assistance is made by the adoptive parent(s) completing the Application for Adoption Assistance form, preferably at the time of adoptive placement, and must be prior to finalization of the adoption.
  - (b) The adoptive parent(s) must supply documentation of the following when applying for Adoption Assistance:
    - 1. Availability of and benefits through private insurance (when the adoptive parent(s) is applying for medical services for the child through Adoption Assistance);
    - 2. non-recurring expenses statement (i.e. legal fees, adoption fees, or other allowable expenses).
  - (c) Effective dates of the Adoption Assistance Agreement cannot be prior to the last signature date on the Adoption Assistance Agreement forms. No agreement may be initiated without a completed, signed, and approved Adoption Assistance Application.
- (9) Renewals
- (a) Renewal of Adoption Assistance agreements must be completed annually in order for Adoption Assistance services to continue.
  - (b) The annual renewal of Adoption Assistance requires negotiation with the adoptive parent(s), completion of the Adoption Assistance Renewal Affidavit, Adoption Assistance Application, and completion of the Adoption Assistance Agreements.
  - (c) The adoptive parent(s) will provide any requested medical information on the child, change in benefits or other resources or changes in the child's circumstances (i.e. school attendance, age, child no longer in the home).
  - (d) If the adoptive parent(s) fails to participate in the renewal process for Adoption Assistance or does not return the required forms (see (9) (c) by the date the renewal is due, the Adoption Assistance Agreement shall be terminated.
  - (e) Failure to execute the Renewal Agreement shall constitute consent on the part of both parties for termination of the agreement.

## (10) Revisions

- (a) The Adoption Assistance Agreement may be revised any time after approval when changes affecting eligibility become known to the Department and/or the family or child's circumstances change.
- (b) A revision requires negotiation with the adoptive parent(s) and completion of the Adoption Assistance Application and Adoption Assistance Agreement.
- (c) The effective date of a revision in Adoption Assistance cannot be prior to the last signature date on the Adoption Assistance Agreement. No agreement may be initiated without a completed, signed and approved Adoption Assistance Application.

## (11) Overpayments

- (a) An overpayment in Adoption Assistance will occur in any of the following circumstances:
  - 1. Both the child's foster family and adoptive parent(s) receive a monthly payment for the same time period;
  - 2. the adoptive parent(s) receives a payment for the time period when the child is no longer their legal responsibility;
  - 3. the adoptive parent(s) receives duplicate SSA/SSI/VA benefits and a monthly payment for the child during the same time period;
  - 4. the adoptive parent(s) receives payment for an ineligible service;
  - 5. the adoptive parent(s) receives a payment when the child is in an out of home placement and fails to contribute to the support of the child;
  - 6. the adoptive parent(s) receive a payment for a child who is deceased;
  - 7. the adoptive parent(s) receive a payment for a child who is over the eligible age;
  - 8. any time the adoptive parent(s) fail to report a change affecting eligibility;
- (b) Overpayments of Adoption Assistance will be collected in accordance with the procedures and policies of Department of Children's Services, Fiscal Services.

## (12) Children Approved For Adoption Assistance in Tennessee Who Live Out-of-State

- (a) Adoption Assistance monthly payments will continue to be received from Tennessee when the adoptive parent(s) and child reside out of state.
- (b) Payments for services will be made in accordance with the Adoption Assistance Agreement.
- (c) Social Services will be limited to services provided by Social Services Block Grant in the state in which the child lives.
- (d) Prior to finalization, the interests of the adopted child are protected through procedures with Tennessee Interstate Services at the time an ICPC referral is made.

- (e) After finalization, Department of Children's Services has the responsibility for contacting the local Medicaid Office in the other state, assisting in directing the adoptive parent(s) to that agency and ensuring they have the necessary documentation for eligibility. When appropriate, referrals will be made to the State Department providing Social Services under Social Services Block Grant.
- (13) Payment of Medical/Psychological/Psychiatric, Dental and Hospital Services for Agreement Prior to October 1, 1997
- (a) Adoptive parent(s) are to first use private insurance available to the child in meeting the child's medical/psychological/psychiatric, dental, or hospital needs.
  - (b) The adoptive parent(s) will avail themselves to any resources that will assist in meeting the needs of the child. If family medical insurance coverage is available to adoptive parent(s), the adoptive parent(s) must ensure the child's coverage under this family medical plan.
  - (c) The State of Tennessee will not be responsible under the Adoption Assistance Agreement for the payment of the adoptive parent(s) private insurance premium or any deductible incurred in meeting the child's medical needs.
  - (d) Payment will not be made to any provider for any services until completion of the service.
  - (e) The State will not, in any case, supplement a TennCare/Medicaid rate for a TennCare/Medicaid provider.
  - (f) The State shall, in all cases, pay only the difference between the cost of services payable by the adoptive parent(s) insurance coverage and the TennCare/Medicaid rate accepted by a non-TennCare/Medicaid provider, the State contract rate, or the negotiated rate, where applicable.
  - (g) Services covered by government sponsored programs in other states or countries for which the child or adoptive parent(s) may be eligible and which cover the services identified in the Adoption Assistance Agreement and which do not have specific exclusions for reimbursement requirements for the coverages shall not be reimbursed by the State of Tennessee to the adoptive parent(s) or the sponsoring government. The adoptive parent(s) must provide any necessary documentation to substantiate ineligibility for this coverage.
  - (h) When all available resources have been explored or depleted, Adoption Assistance will provide medical/psychological/psychiatric, dental and hospital services as documented and provided for in the Adoption Assistance Agreement.
  - (i) All residential placements paid through Adoption Assistance must be approved in writing by the State Adoptions Services Program Director prior to the child's admission to a residential treatment facility.
    - 1. Children residing in Tennessee shall be placed in a state contracted facility with the state contracted rate unless exceptional documented circumstances apply which make out of state treatment necessary.
    - 2. For children residing outside Tennessee, residential treatment within their state of residence shall be explored and appropriate rates negotiated.
  - (j) For children receiving services out of state, providers will be paid through Adoption Assistance at the usual and customary rate for the locale in which the child resides. Such usual and customary rate is determined at the sole discretion of the Department.
- (14) Payment of Medical/Psychological/Psychiatric, Dental, and Hospital Services for Agreements Created on or After October 1, 1997.

- (a) The adoptive parent(s) are to first use private insurance available to the child in meeting the child's medical/psychological/psychiatric needs.
  - (b) The adoptive parent(s) will avail themselves to any resources that will assist in meeting the needs of the child. If family medical insurance coverage is available to adoptive parent(s), the adoptive parent(s) must ensure the child's coverage under this family medical plan.
  - (c) The State of Tennessee will not be responsible under the Adoption Assistance Agreement for the payment of the adoptive family's private insurance premium or any deductible incurred in meeting the child's medical needs.
  - (d) Adoption Assistance will pay for medical/psychological/ psychiatric services identified in the Agreement only when the child is ineligible for both private insurance and TennCare/ Medicaid.
  - (e) Services covered by government sponsored programs in other states or countries for which the child or adoptive parent(s) may be eligible and which cover the services identified in the Adoption Assistance Agreement and which do not have specific exclusions for reimbursement requirements for the coverages shall not be reimbursed by the State of Tennessee to the adoptive parent(s) or the sponsoring government. The adoptive parent(s) shall provide any necessary documentation to substantiate ineligibility for this coverage.
  - (f) All residential placements paid through Adoption Assistance must be approved in writing by the State Adoptions Services Program Director prior to admission to a residential treatment facility.
    - 1. Children residing in Tennessee shall be placed in a state contracted facility with the state contracted rate unless exceptional, documented circumstances apply which make out of state treatment necessary.
    - 2. For children residing outside Tennessee, residential treatment within their state of residence shall be explored and appropriate rates negotiated.
  - (g) When a child is ineligible for private insurance and TennCare/ Medicaid, providers will be paid through Adoption Assistance at the usual and customary rate for the locale in which the child resides and is determined at the sole discretion of the Department.
  - (h) Payment will not be made to any provider for any services until completion of the service.
- (15) Non-Recurring Expenses
- (a) Department of Children's Services payment of expenditures for non-recurring expenses (the one-time expenses of adoption for which parents are ultimately responsible) may not exceed \$1500.00 per child for children placed for adoption on or after October 1, 1997. For children who were placed for adoption prior to October 1, 1997, the maximum rate of non-recurring expenses is \$2,000.00. Non-recurring adoption expenses may include the following:
    - 1. Legal fees (invoices from attorneys must include the names of all children included in the adoption petition);
    - 2. adoption fees, including the application and home study by a private agency;
    - 3. travel expenses (transportation, lodging) related to the placement (travel must be in accordance with State travel regulations);



4. health and psychological examinations of the adoptive parent(s) related to the completion of the home study;
  5. fees for supervision of the placement by a Licensed Child-Placing Agency before the adoption is final.
- (b) No non-recurring expenses for the application fee, the adoptive home study, supervision of placement through finalization of the adoption or post finalization services will be paid for a child authorized for and receiving services through a Tennessee Licensed Child Placing Agency who holds a special needs adoption contract with the Department.
  - (c) Non-recurring expenses are paid for services relating to the finalization of the adoption. Fees incurred for legal expenses relating to terminations of parental rights, appeals or disrupted adoptions or the negotiation of Adoption Assistance Agreements will not be paid through Adoption Assistance.
  - (d) Department of Children's Services will not reimburse adoptive parent(s) for out-of-pocket expenses that are otherwise paid, e.g. by employee's benefits.
  - (e) The \$1500.00/\$2000.00 maximum non-recurring rate may relate to only one non-recurring expense, or to a combination of non-recurring expenses.
  - (f) When the adoption of the child involves interstate placement, the state that enters into an Adoption Assistance Agreement is responsible for paying the non-recurring adoption expenses of the child.
  - (g) In cases where there is no agreement for ongoing Adoption Assistance payments, the state in which the final adoption decree is issued is responsible for reimbursement of non-recurring expenses if the child meets the requirements.
- (16) Termination of Adoption Assistance
- (a) Termination of Adoption Assistance will occur in any of the following circumstances:
    1. Upon the conclusion of the terms of the Adoption Assistance Agreement
    2. upon the adoptive parent(s) request;
    3. when the child reaches the age of 18. For Title IV-E eligible children, Adoption Assistance will be provided until the child is 21 years of age if the child's eligibility for Adoption Assistance was based on a continuing mental or physical handicap which warrants continuation. For a state funded eligible child, Adoption Assistance will be provided until the child is 21 years of age as long as the child remains in high school and whose adoptive placement occurred on or after October 1, 1997. For state funded eligible children whose placements occurred prior to October 1, 1997, the child may continue to be eligible for adoption assistance as long as he/she remains in any accredited school on a full-time basis;
    4. upon the child's death;
    5. upon the death of the parent(s) of the child (one in a single-parent family and both parents in a two-parent family);
    6. at the cessation of legal responsibility of the adoptive parent(s) for the child;
    7. if the Department determines that the child is no longer receiving support from the adoptive parent(s);

8. if the Department determines that the family fails to return the renewal forms for Adoption Assistance by the renewal date;
9. loss of contact with the adoptive family;
10. all payments are subject to funding through Adoption Assistance.

(17) Denying Adoption Assistance

- (a) The Department of Children's Services must deny Adoption Assistance benefits when one of the following conditions exists:
  1. The child does not meet the criteria of special needs;
  2. the child was not in the custody/guardianship of the Department or a Tennessee Licensed Child Placing Agency immediately preceding an adoptive placement or the entry of an Order of Adoption;
  3. the services requested are not provided within the parameters of Adoption Assistance policy;
  4. finalization of the adoption has occurred.

(18) Application for Adoption Assistance After Finalization

- (a) An application for Adoption Assistance will be made by the adoptive parent(s) in the Department of Children's Services office serving the adoptive parent(s) county of residence.
- (b) Out-of-state adoptive parent(s) who resided out of state at the time the child was placed by the Department of Children's Services or a Tennessee Licensed Child Placing Agency may apply for Adoption Assistance in the Tennessee Department of Children's Services office serving the area from which the child was placed.
- (c) Tennessee residents who received an adoptive placement and moved out-of-state may apply for Adoption Assistance in the Tennessee Department of Children's Services office serving the area of their residence at the time of placement.
- (d) The application for Adoption Assistance is made by the adoptive parent(s) completing the Adoption Assistance Application form.
- (e) The application for Adoption Assistance filed after the finalization of the adoption must be denied.
- (f) The adoptive parent(s) may appeal the Department's denial of Adoption Assistance in accordance with the rules and procedures of the State's fair hearing and appeal process.

(19) Appeal Process

- (a) The adoptive parent(s) may appeal the Department's decision to deny, reduce, change or terminate Adoption Assistance in accordance with rules and procedures of the State's fair hearing and appeal process.
- (b) The adoptive parent(s) have 30 days to appeal an adverse decision. Requests for appeals may be made verbally or in writing to the office of the Department where the adverse decision was made. The

Department will provide Appeal for Fair Hearing by State Department form. The adoptive parent(s) must complete and return this form within 10 days. When all time lines of the appeal process are met, Adoption Assistance, which has been active at the time of the adverse action, will continue pending the outcome of the appeal. Should the adoptive parent(s) be found to be ineligible for payments, all financial payments and payments for services will be considered an overpayment and subject to recovery.

- (c) If the adoptive parents' appeal results in the child being found eligible, an Adoption Assistance Agreement will be processed in accordance with adoption assistance rules, policies and procedures.
- (d) When application for Adoption Assistance is made after finalization of the adoption, the adoptive parent(s) is responsible for providing documentation of the child's special needs at the time of adoptive placement.
- (e) The appeals hearing may take place in the Department of Children's Services office designated by the hearing officer; or, at the discretion of the hearing officer may be held through the use of a conference call when the adoptive parent(s) reside out of state.

*Authority: T.C.A. § 36-1-201, 37-5-105, 37-5-106, and 37-5-112. Administrative History: New Rule*

#### **0250-7-2-.04 DEFERRED ADOPTION ASSISTANCE**

- (1) Eligibility For Child
  - (a) Deferred Adoption Assistance is available for children placed for adoption on or after October 1, 1997 who do not, at the time of adoptive placement, meet the special needs requirement to receive Adoption Assistance, but who do have certain high risk factors as defined by the Department's policy which could result in the child developing medical/ psychological problems in the future.
  - (b) A child who has been in the custody of the Department or a Tennessee Licensed Child Placing Agency (public or non-profit) immediately preceding adoptive placement or a child who was in the legal custody of the Department or a Tennessee Licensed Child Placing Agency immediately prior to the entry of an order of adoption or a child in the full guardianship of the Department or a Tennessee Licensed Child Placing agency (public or non-profit) may be eligible for Deferred Adoption Assistance. "Immediately preceding adoptive placement" applies to situations when the child was surrendered directly to the adoptive parents while the child was in the custody of the agency or when termination of parental rights has occurred as a result of petition for termination/adoption filed by prospective adoptive parents. This does not apply to those cases where termination of parental rights and adoption are pursued by the prospective adoptive parents after a transfer of custody to them.
- (2) Eligibility Of Adoptive Parent(s)
  - (a) The adoptive parent(s) must fulfill all adoption requirements as evidenced by an approved home study completed by the Department or other licensed child placing agency in accordance with 36-1-102 (29 & 30) and who are accepting adoptive placement of a child who is eligible for Deferred Adoption Assistance.
  - (b) The adoptive parent(s) must submit a completed and signed adoption assistance application on a form developed by the Department.
  - (c) Provided the adoptive parent(s) meets all applicable requirements, the Department will not consider the adoptive parent's residence in initiating/continuing Deferred Adoption Assistance.

## (3) Funding

- (a) The Department must determine the child's categorical eligibility for Title IV-E (TANF or SSI) funding or state funding at the time the initial Deferred Adoption Assistance Application is approved.
- (b) All cases involving children whose foster care was funded under Title IV-E will be eligible for Title IV-E. All cases involving children whose foster care was funded under state funding will be eligible for state funding.

## (4) Parameters of Deferred Adoption Assistance

- (a) The Deferred Adoption Assistance Application must be signed and approved by the Department of Children's Services' Team Coordinator prior to finalization of the adoption.
- (b) No payments or services will be included or provided in the Deferred Adoption Assistance.
- (c) The Department or Tennessee Licensed Child Placing Agency staff must obtain written documentation from the physician, psychiatrist, psychologist or licensed clinical social worker that the high risk factor exists and the potential impact of the risk factor.
- (d) The adoptive parent(s) may request a revision of the Deferred Adoption Assistance at any time the child begins to exhibit physical/psychological problems related to the high risk factor, which was the basis for the deferred adoption assistance approval. Once the child has documented medical/psychological problems related to the child's identified high risk factor, a revision in the Deferred Adoption Assistance must be completed to activate an Adoption Assistance Agreement.
- (e) Once a child is determined to meet the special needs definition to be eligible for Adoption Assistance, there will be no retroactive payments for monthly maintenance or any other services.
- (f) Services included in the Adoption Assistance Agreement must be related to the child's defined special needs resulting from the identified high risk factors. Specific defined services will be provided in accordance with current Department policy.
- (g) The effective date of Adoption Assistance payments cannot be prior to the last signature date on the revised Adoption Assistance Agreement.

## (5) Responsibilities of Adoptive Parents Eligible for Deferred Adoption Assistance

- (a) The adoptive parent(s) must notify the Department of any of the following changes:
  - 1. The child is no longer in the home;
  - 2. The child is no longer in the custody or guardianship of the adoptive parent(s);
  - 3. The child has his/her eighteenth birthday;
- (b) The adoptive parent(s) will be responsible for contributing to the support of a child in their legal custody residing outside their home.
- (c) To activate an Adoption Assistance Agreement from the Deferred Adoption Assistance status, the adoptive parent must provide written documentation from the physician, psychiatrist/ psychologist or

licensed clinical social worker of the physical/psychological problems the child is experiencing and that these problems are the result of the high risk factors identified in the initial Deferred Adoption Assistance.

(6) Applications/Renewals/Revisions for Deferred Adoption Assistance

- (a) The application for Deferred Adoption Assistance is made by the adoptive parent(s) completing the form, Application for Adoption Assistance, preferably at the time of placement and must be prior to finalization of the adoption. The application is approved or denied on this form by the Department Team Coordinator. No other forms are completed for Deferred Adoption Assistance.
- (b) There will be no annual renewal of the Deferred Adoption Assistance.
- (c) The Deferred Adoption Assistance may be revised at any time the adoptive parent(s) request to activate Adoption Assistance and provide the required documentation to establish eligibility for Adoption Assistance.
- (d) A revision in the Deferred Adoption Assistance to Adoption Assistance requires negotiation with the adoptive parent(s) and completion of the Adoption Assistance Application and Adoption Assistance Agreement. All points of eligibility for Adoption Assistance must be met and all documentation from treating professionals must be made available to the Department.

(7) Termination of Deferred Adoption Assistance

- (a) Deferred Adoption Assistance will terminate in any of the following circumstances:
  - 1. The child reaches age 18;
  - 2. The adoptive parent(s) are no longer legally responsible for the support of the child;
  - 3. The child is no longer receiving support from the adoptive parent(s);
  - 4. The adoptive parent in a one-parent family dies or both adoptive parents in a two-parent family die. Deferred Adoption Assistance is not transferable to a caretaker who assumes responsibility or custody or guardianship of the child(ren) upon the death of the adoptive parent(s);
  - 5. The child who is eligible for Deferred Adoption Assistance dies.

(8) Case Maintenance of Deferred Adoption Assistance

- (a) The Deferred Adoption Assistance case will be maintained in the Department of Children's Services Office serving the county of residence of the adoptive parent(s) at the time of adoptive placement.
- (b) In the event the adoptive parent(s) reside outside Tennessee at the time of adoptive placement, the case will be maintained in the Department of Children's Services Office serving the county of residence of the child prior to placement.

(9) Denying Deferred Adoption Assistance

- (a) The Department of Children's Services Team Coordinator must deny the Deferred Adoption Assistance Application when one of the following exists:

1. The child has no identified high risk factors;
2. Finalization of the adoption has occurred.

(10) Application For Deferred Adoption Assistance After Finalization

- (a) Application for Deferred Adoption Assistance will be made by the adoptive parent(s) in the Department of Children's Services Office serving the adoptive parent(s) at the time of adoptive placement.
- (b) Out-of-state adoptive parent(s) who resided out-of-state at the time the child was placed for adoption may apply for Deferred Adoption Assistance in the Tennessee Department of Children's Services Office serving the area from which the child was placed.
- (c) An application for Deferred Adoption Assistance filed after finalization of the adoption must be denied. The adoptive parent(s) will be notified of the right to appeal.

(11) Appeal Process

- (a) The adoptive parent(s) may appeal the Department's decision to deny or terminate the Deferred Adoption Assistance. Requests for appeals may be made verbally or in writing to the office of the Department where the adverse decision was made. The Department will provide Appeal for Fair Hearing by State Department form. The adoptive parent(s) must complete and return this form within ten days. When all time lines of the appeal process are met, Deferred Adoption Assistance, which existed at the time of termination, will continue pending the outcome of the appeal.
- (b) If the adoptive parents' appeal results in the child being found eligible, a Deferred Adoption Assistance Application will be processed in accordance with the Deferred Adoption Assistance rules, policies, and procedures.
- (c) The appeal hearing may take place in the Department of Children's Services office designated by the hearing officer; or, at the discretion of the hearing officer, may be held through the use of a conference call when the adoptive parent(s) reside out of state.

**Authority:** T.C.A. § 36-1-201, 37-5-105, 37-5-106, and 37-5-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-20)

**DEPARTMENT OF CHILDREN'S SERVICES - 0250**  
**SOCIAL SERVICES DIVISION**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in conference room B on the seventh floor of the Cordell Hull Building located at 436 6th Avenue North, Nashville, Tennessee, 37243 at 1:30 p.m., central standard time on the 12th day of July, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 436 6th Avenue North, Nashville, Tennessee, 37243, 615-741-9175.

For a copy of this notice of rulemaking hearing, contact Jane Chittick, Director of Adoptions, 8<sup>th</sup> Floor, Cordell Hull Building, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243-1290. (615) 532-5626.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0250-7-7**

**ACCESS TO ADOPTION RECORDS FINALIZED PRIOR TO 1951 AND ACCESS TO RECORDS  
MAINTAINED BY THE TENNESSEE CHILDREN'S HOME SOCIETY**

The text of the proposed amendments are as follows:

**AMENDMENTS**

Paragraph (4) of Rule 0250-7-7-02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (8) Adoption record- The records, reports, and papers, including those of termination of parental rights or adoption proceeding, maintained about an adopted person: by the clerk or judge of the court where the adoption petition is filed, where a surrender or revocation of a surrender is filed, or by the state, district or county offices of the Department, or by a licensed or chartered child-placing agency, or by any other information source and which record contains all social, medical, legal or other information concerning a person who has been placed for adoption or for an adopted person, and which existed prior to its becoming a sealed record or a sealed adoption record; provided, however, that the adoption record shall not include any home study or preliminary home study or any information obtained by the Department, a licensed child-placing agency, a licensed clinical social worker, or an attorney in connection with a home study or adoption proceeding other than that which is expressly included in a report to the court by such persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to T.C.A. §36-1-138. This record is confidential and is not subject to disclosure except as provided in this chapter.

Paragraph (8) of Rule 0250-7-7-02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (8) Biological Parent(s)-Based on a birth certificate, a court order, an unqualified surrender of parental rights, or based on an unqualified acknowledgment of parenthood, or any other document contained in the sealed record or the

sealed adoption records the person(s) identified as the birth parent(s) who genetically conceived the adopted person. The information in the sealed records, adoptions records, and sealed adoption records must be consistent as to the identity of the biological parent.

Paragraph (14) of Rule 0250-7-7-.02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (14) Eligible Person- A person who is verified by the Department as being in the class of individuals who is permitted by T.C.A. §§ 36-1-101 et seq. and this Chapter to receive access to records.

Subparagraph (a) of paragraph (18) Finalized Adoptions is amended by adding the following language at the end of the subparagraph so that, as amended, the subparagraph shall read:

- (18) (a) Any adoptions which were completed by the entry of an order of adoption, or which adoptions were dismissed, or were otherwise never completed due to abandonment of any further necessary activity related to the completion of the adoption, and for which records and papers of an adoption proceedings existed prior to March 16, 1951, and which records became sealed or closed by the court before that date, or where the record or other evidence demonstrates that a person was surrendered for adoption prior to March 16, 1951; or

Subparagraph (b) of paragraph (18) Finalized Adoptions is amended by adding the following language at the end of the subparagraph so that, as amended, the subparagraph shall read:

- (18) (b) Any adoptions which, before the passage of House Bill 406 (1995), have been previously treated as, or are now determined by the Department or any other information source to be, cases of adoptions completed by the entry of an order of adoption or by order of dismissal or as otherwise never completed due to the abandonment of any further necessary activity related to the completion of the adoption prior to March 16, 1951, and for which records and papers of such adoption exists prior to March 16, 1951, or where the record or other evidence demonstrates that a person was surrendered for adoption prior to March 16, 1951.

Paragraph (31) of Rule 0250-7-7-.02 Definitions is amended by adding new language at the end of the paragraph so that as amended the paragraph shall read:

- (31) Sealed adoption records- The adoption record which had been prepared or compiled by the clerk or judge of the court where the adoption petition was filed, by the Department, or a licensed child-placing agency, concerning an adopted person or a person placed for adoption as the record exists subsequent to the entry of an order of adoption or subsequent to the entry of an order of dismissal of the adoption petition. Such record and the information therein shall be confidential and shall be opened only as provided in this part. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to T.C.A. § 36-1-138.

Subparagraph (b) of paragraph (37) of Rule 0250-7-7-.02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (37) (b) Information, including legal documents or affidavits which establishes the person's legal relationship to a person involved in the adoption (adopted person 21 years of age or older, birth/adoptive/legal parent of the adopted person, siblings, lineal descendants, or lineal ancestors of the adopted person or legal representative of the requesting party), or which otherwise establishes the person's right to request access.



Paragraph (1) of Rule 0250-7-7-.03 Procedures for Access to Records is amended by deleting the Post Adoption Services address and substituting the following address so that as amended the paragraph shall read:

- (1) Access to sealed records, sealed adoption records, or post-adoption records shall be granted by the Department to an eligible person as provided pursuant to this Chapter when such person’s identity has been verified and such records exist. A person seeking access to sealed records, sealed adoption records, or post-adoption records as an eligible person pursuant to this Chapter shall file a written request with the Department’s post-adoptions unit in care of:

Tennessee Department of Children’s Services  
 Post Adoption Services  
 436 6<sup>th</sup> Avenue North  
 Nashville, TN 37243-1290

Paragraph (7) of Rule 0250-7-7-.03 Procedures for Access to Records is amended by adding subparagraph (c) so that as amended the subparagraph shall read:

- (7) (c) Information relating to the counseling of a biological mother regarding crisis pregnancy counseling will be removed from the sealed record or sealed adoption records prior to the review and/or copying of the record for the eligible person.

Paragraph (5) of Rule 0250-7-7-.04 Fees and Charges for Adoption Record Information is amended by deleting the language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (5) Payments for records searches shall be made to the Department of Children Services, Adoption Services, 436 6<sup>th</sup> Avenue North, Nashville, Tennessee 37243-1290. Payments by mail may be made by personal check, cashier’s check, or money order payable to the Department of Children Services at this address. Cash will be accepted only when hand-delivered to the Adoption Services section at this address.

Paragraph (11) of Rule 0250-7-7-.02 Definitions is renumbered to paragraph (12) and each paragraph thereafter to paragraph (37) is renumbered consecutively thereafter.

Paragraph (11) of Rule 0250-7-7-.02 Definitions is inserted as a new definition so that as amended the paragraph shall read:

- (11) Crisis Pregnancy Counseling – Any counseling provided by the Department, a licensed child-placing agency or licensed clinical social worker related to the pregnancy, planning and decisions for the expected child by his/her mother.

Subparagraph (b) of Paragraph (4) of Rule 0250-7-7-.04 Fees and Charges for Adoption Record Information is amended by deleting the language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (4) (b) No fee will be charged to any person who receives Temporary Assistance for Needy Families (TANF) or any other means-tested cash assistance program which may replace TANF, or Food Stamps or any other means-tested food assistance program which may replace the Food Stamp Program, or if the person currently receives Medicaid or TennCare which is based upon a means test which places the person below Federal Poverty Guidelines as published in the Federal Register, or if the person receives any other means-tested medical assistance program which is based upon a means test which places the person below Federal Poverty Guidelines as published in the Federal Register, or if the person currently receives Supplemental Security Income (SSI) under Title “XVI” of the “Social Security Act”.

Subparagraph (c) of paragraph (4) of Rule 0250-7-7-.04 Fees and Charges for Adoption Record Information is amended by deleting the language in its entirety and substituting language so that as amended the subparagraph shall read:

- (4) (c) The person requesting the fee waiver will be required to provide written verification of current eligibility for any of the above designated programs from the administering agency.

Subparagraph (d) of paragraph (4) of Rule 0250-7-7-.04 Fees and Charges for Adoption Record Information is amended by deleting part of the language in the first sentence so that as amended the subparagraph shall read:

- (4) (d) If the person cannot show such verification of eligibility under the above programs, the person requesting the fee waiver will be required to complete a sworn declaration of the source and amount of income and resources on a form provided by the Department. If the person's family unit's income, based upon its size, does not exceed the current threshold in the Federal Register and if the family unit's non-exempt resources do not exceed \$1,000, the fee for search will be waived.

The Authority for 0250-7-7 is amended by deleting 71-1105(4) and (12) and 71-1-124 and adding the following so that as amended the Authority shall read:

**Authority:** *T.C.A. § 4-5-202; Public Chapter 532 (1995), house Bill 406 (1995). T.C.A. §§ 4-5-226(b)(2); 36-1-141(a) and (d); 37-5-101; 37-5-105; 37-5-106; 37-5-112(a); and 36-1-101 et seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-21)

**DEPARTMENT OF CHILDREN'S SERVICES - 0250  
DIVISION OF SOCIAL SERVICES**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in the Conference Room B on the 7<sup>th</sup> Floor, Cordell Hull Building located at 436 6<sup>th</sup> Avenue North, Nashville, TN 37243 at 1:30 p.m. on the 12th day of July, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7<sup>th</sup> floor of the Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Anita Cowan, 436 6<sup>th</sup> Avenue North, 8<sup>th</sup> Floor, Nashville, TN 37243-1290; (615) 532-5627.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0250-7-11**

**RELEASE OF NON-IDENTIFYING INFORMATION FROM RECORDS OF ADOPTIONS AND TRANSMITTAL OF MEDICAL INFORMATION REGARDING CERTAIN PERSONS AFFECTED BY ADOPTIONS**

**NEW RULES**

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**0250-7-11-.01 PURPOSE OF CHAPTER**

- (1) The purpose of this chapter is to provide, in compliance with Tennessee Code Annotated, §§ 36-1-133, 36-1-134, 36-1-135 and Public Chapter 1054 (1996), procedures for release of non-identifying information and transmission of updated medical information relating to adoptions of certain persons whose records are maintained by the Department of Children’s Services as sealed records, sealed adoption records, or as post-adoption records.

*Authority: T.C.A. § 4-5-202, T.C.A. §§ 36-1-101 et seq.; Chapter 13 of Public Chapter 1079 (1996); Public Chapter 1054 (1996)*

**0250-7-11-.02 DEFINITIONS**

- (1) Adopted Person:
  - (a) Any person who is or has been adopted under this part or under the laws of any state, territory, or foreign country.
  - (b) For purposes of the processing and handling of, and access to, any adoption records, sealed adoption records, sealed records, post-adoption records, or adoption assistance records pursuant to this part, this term shall also include a person for whom any of those records is maintained by the court, other persons or entities or persons authorized to conduct a surrender or revocation of surrender pursuant to this part, or which records are maintained by the Department, a licensed or chartered child-placing agency, a licensed clinical social worker, or the Department of Health or other information source, whether an adoption petition was ever filed, whether an adoption order was ever entered, whether the adoption was ever dismissed, whether the adoption was ever finalized, or whether the adoption was attempted or was otherwise never completed due to the abandonment of any necessary activity related to the completion of the adoption.
  - (c) Whenever used, the term “adopted person” shall mean persons in subparagraphs (a) and (b).
- (2) Adoption - The social and legal process of establishing by court order, other than by paternity or legitimation proceedings or by voluntary acknowledgment of paternity, the legal relationship of parent and child.
- (3) Adoption Record - The records, reports, and papers, including those of termination of parental rights or adoption proceeding, maintained about an adopted person by the clerk or judge of the court where the adoption petition is filed, where a surrender or revocation of a surrender is filed, or by the state, district or county offices of the Department, or by a licensed or chartered child-placing agency, or by any other information source and which record

contains all social, medical, legal or other information concerning a person who has been placed for adoption or for an adopted person, and which existed prior to its becoming a sealed record or a sealed adoption record; provided, however, that the adoption record shall not include any home study or preliminary home study or any information obtained by the Department, a licensed child-placing agency, a licensed clinical social worker, or an attorney in connection with a home study or adoption proceeding other than that which is expressly included in a report to the court by such persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to T.C.A. § 36-1-138.

- (4) Adoptive Parent(s) - The person(s) who have been made the legal parent(s) of a child by the entry of an order of adoption under the provisions of the law of any state, territory or foreign county.
- (5) Agency Care - The chartered agency, the Department, or Tennessee licensed child placing agency which provided foster care services to the child and who may have placed the child for the purpose of adoption.
- (6) Alleged Parent - A person who was named or described in the sealed record or the sealed adoption record as parent of the adopted person, but who does not otherwise meet the definition of biological parent pursuant to these rules.
- (7) Biological Parent(s) - Based on a birth certificate, a court order, an unqualified surrender of parental rights, or based on an unqualified acknowledgment of parenthood, or any other document contained in the sealed record or the sealed adoption records the person(s) identified as the birth parent(s) who genetically conceived the adopted person. The information in the sealed records, adoption records, and sealed adoption records must be consistent as to the identity of the biological parent.
- (8) Biological Relative - The biological parents or child, the brothers and sisters of the whole or half blood, the blood grandparents of any degree, the blood aunts or uncles, or the blood cousins of the first degree of an adopted person or person for whom any adoption records, sealed record, sealed adoption record or post-adoption records are maintained.
- (9) Chartered Child-Placing Agency - For purposes of this Chapter, an agency which had received a charter from the State of Tennessee through legislative action or by incorporation for the operation of an entity or a program of any type which engaged in the placement of children for foster care or residential care as part of a plan or program for which those children were or could have been made available for adoptive placement and which may have, at sometime during its existence, become subject to any licensing requirements by the Department or its predecessors.
- (10) Child - Any person under eighteen (18) years of age.
- (11) Court - The chancery, circuit, or former county courts, or other courts in Tennessee which have or may have possessed adoption jurisdiction at anytime.
- (12) Court Report - The report to the adoption or surrender court in response to an order of reference which describes to the court the status of the child and the prospective adoptive parents or the persons to whom the child is surrendered. Such a report may be preliminary, supplementary, or final in nature. The court report shall not include the home study or preliminary home study, but instead shall include a summary of such study.
- (13) Department - The Tennessee Department of Children's Services or any of its divisions or units.
- (14) Department of General Services - The state executive branch agency which maintains the State's records management center and in which the sealed records or adoption records are stored.
- (15) Department of Health - The state executive branch agency which administers the Division of Vital Statistics, which Division maintains records of births.

- (16) Eligible Person - A person who is verified by the Department as being in the class of individuals who is permitted by this Chapter to receive non-identifying information and updated medical information.
- (a) For purposes of Tennessee Code Annotated, § 36-1-133, release of non-identifying information, eligible persons are an adopted person eighteen (18) years of age or older, the adoptive parents or guardian of an adopted person under eighteen (18) years of age, the biological or legal relatives of an adopted person, the lineal descendants of the adopted person, or the legal representatives of such persons.
  - (b) For purposes of § 36-1-135 concerning transmission of updated medical information, eligible persons are an adopted person age eighteen (18) or older, the adoptive parents of an adopted person under eighteen (18) years of age, any biological or legal relative of an adopted person, or the legal representative of any adopted person or of any biological or legal relative.
  - (c) The alleged parent/relative is not an eligible person for transmittal of updated medical information or to receive non-identifying information.
- (17) Family Unit - A group of two or more persons residing together who are related by blood, marriage, or adoption. A person whose work, study, treatment or care results in only temporary, periodic, or otherwise time-limited absence from the family unit shall be deemed to be a member of the family unit to which he or she usually returns to reside at the end of such absences. Any person who receives 50% or more of his or her support, in cash or in-kind, from persons to whom he or she is related by blood, marriage or adoption shall, for purposes of income and resource determination, also be deemed to be a member of the family unit which contributes the greatest percentage of such support.
- (18) Foster Care - The provision of full-time temporary out-of-home care for a child in a private residence by one or more persons (foster parents) who have been trained and approved by the Department or a licensed child-placing agency to care for children who, for various reasons, can no longer remain in their own home, or the full-time care provided by prospective adoptive parents who have received a child as a result of the surrender of parental rights, a parental consent, or as the result of a termination of parental rights.
- (19) Guardian or Co-Guardian - A person or persons or an entity, other than the parent of a child, appointed by a court or defined by law specifically as “guardian” or “co-guardian” or “conservator” to provide supervision, protection for and care for the person or property or both, of a child or adult. This may also include the Department, a licensed child placing agency or a child caring agency.
- (20) Health Care - For purposes of this Chapter, the provision as a person or entity of medical, surgical, hospital, psychiatric, or psychological care which is subject to the requirements of licensing by any state, territory or foreign country.
- (21) Health Care Facility - For purposes of this Chapter, a place or entity which meets the licensing requirements of any state, territory or foreign country for the provision of health care and which is providing medical, surgical, hospital, psychiatric, psychological or clinical care to a person affected by the provisions of this Chapter.
- (22) Health Care Professional - For purposes of this Chapter, an individual who is licensed by any state, territory or foreign country to administer health care to a person, and who is a treating physician, psychologist, or psychiatrist of a person about whom medical information may be needed and who is affected by the provisions of this Chapter.
- (23) Home Study - The product of a preparation process in which individuals or families are assessed by themselves and the Department or licensed child-placing agency, or a licensed clinical social worker as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study shall conform to the requirements set forth in the rules of the Department and becomes a written document which is used in the decision

to approve or deny a particular home for adoptive placement. The home study shall be confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138.

- (24) Identifying Information - Any information contained in a adoption record, sealed record, sealed adoption record, or post-adoption record not permitted to be released pursuant to T.C.A. § 36-1-133(b)(1)-(7).
- (25) Legal parent:
- (a) The biological mother of a child;
  - (b) A man who is or has been married to the biological mother of the child if the child was born during the marriage or within 300 days after the marriage was terminated for any reason, or if the child was born after a decree of separation was entered by a court;
  - (c) A man who attempted to marry the biological mother of the child before the child's birth by a marriage apparently in compliance with the law, even if the marriage is declared invalid, if the child was born during the attempted marriage or within 300 days after the termination of the attempted marriage for any reason;
  - (d) A man who has been adjudicated to be the legal father of the child by any court or administrative body of this State or any other state or territory or foreign country or who has signed, pursuant to §§ 24-1-118, 68-3-203(g), 68-3-302 and 68-3-305(b), an unrevoked surrender and sworn acknowledgment of paternity under the provisions of Tennessee law, or who has signed a sworn acknowledgment pursuant to the law of any other state, territory, or foreign country; or
  - (e) An adoptive parent of a child or adult.
- (26) Legal relative - The person who is included in the class of persons set forth in the definition of "biological relative" or "legal parent", and who, at the time a request for search services or information is made pursuant to §§ 36-1-133 and 36-1-135, is related to the adopted person by any legal relationship established by law, court order, or by marriage, but specifically includes, in addition, a step-parent.
- (27) Legal Representative:
- (a) The conservator, guardian, legal custodian, or other person or entity with legal authority to make decisions for an individual with a disability, or an attorney-in-fact, an attorney-at-law representing a person for purposes of obtaining information pursuant to this part, or the legally appointed administrator, executor, or other legally appointed representative of a person's estate, or
  - (b) Any person acting under any durable power of attorney for health care purposes or any person appointed to represent a person and acting pursuant to a living will.
  - (c) For purposes of this definition, "disability" means that the individual is a minor pursuant to any state, territorial, or federal law, or the law of any foreign country or that the individual has been determined by any such laws to be in need of a person or entity to care for the individual due to that individual's physical or mental incapacity or infirmity. Such a person shall exhibit to the Department's satisfaction such authority.
  - (d) Authority to act on behalf of an individual shall be presented to the Department by way of certified copies of orders or powers, or signed statements authorizing representation by attorneys at law.

- (28) Licensed or chartered child-placing agency - Any agency operating under a license to place children for adoption issued by the Department, any other state, territory or the District of Columbia or any agency which operates under the authority of another country with the right to make placement of children for adoption and which has in the Department's sole determination, been authorized to place children for adoption in this state
- (29) Lineal ancestor - Any degree of grandparent or great-grandparent, either by birth or adoption.
- (30) Licensed Clinical Social Worker - An individual who holds a license as an independent practitioner from the board of social worker certification and licensure pursuant to T.C.A. § 63-23-101 et. seq. and in addition, is licensed by the Department to provide foster care placement services and adoption placement services.
- (31) Lineal descendant - A person who descended directly from another person who is the biological or adoptive ancestor of such person, such as the daughter of her mother or granddaughter of her grandmother.
- (32) Non-Identifying Information
- (a) Non-identifying information released from the sealed record, sealed adoption record or post-adoption record maintained by the Department shall consist only of the following:
1. The date and time of the birth of the adopted person and such person's weight and other physical characteristics at birth;
  2. The age of the adopted person's biological relatives at the time of such person's birth;
  3. The nationality, ethnic background, race, and religious preference of the biological or legal relatives;
  4. The educational level of the biological or legal relatives, general occupation, and any talents or hobbies.
  5. A general physical description of the biological or legal relatives, including height, weight, color of hair, color of eyes, complexion, and other similar information;
  6. Whether the biological or legal parent had any other children, and if so, any available non-identifying information about such children;
  7. Available health history of the adopted person, and his or her biological or legal relatives, including specifically, any psychological or psychiatric information which would be expected to have any substantial effect on the adopted person's mental or physical health.
- (b) No information shall be released from the sealed record, sealed adoption record or post-adoption record maintained by the Department which would be calculated to lead to the discovery of the identity or whereabouts of the adopted person or the adopted person's biological or legal relatives.
- (c) Whenever the Department releases information pursuant to the provisions of this section and it appears from the record that the adopted person who has sought information has been adopted two (2) or more times, the Department shall specify to the adopted person whether the information released pertains to the adopted person's birth parents or to any intervening adoptive parent(s).
- (33) Parent(s) - Any biological, legal, adoptive parent, or for purposes of T.C.A. §§ 36-1-133 and 135, step-parents. "Step parent" shall mean the current husband or wife of the adopted person's biological or adoptive parent.

- (34) Post-Adoption Unit - The unit in the state office of the Department responsible for maintaining post-adoption records and search requests and for reviewing and opening or approving the opening of adoption records, sealed records, sealed adoption records, post-adoption records or adoption assistance records pursuant to Title 36, Chapter 1, Part 1 of the Tennessee Code Annotated.
- (35) Post-Adoption Record:
- (a) The record maintained in any medium by the Department, separately from the sealed record or sealed adoption record and subsequent to the sealing of an adoption record or which is maintained about any sealed record or sealed adoption record. The post-adoption record contains information, including, but not limited to, adopted persons or the legal or biological relatives of adopted persons, or about persons for whom sealed records or sealed adoption records are maintained, or about persons who are seeking information about adopted persons, or persons on whom a sealed record or sealed adoption record is maintained, and the post-adoption record contains information concerning, but not limited to, the Contact Veto Registry established by this part, the written inquiries from persons requesting access to records, the search efforts of the Department pursuant to the requirements of the Contact Veto process, the response to those search efforts by those persons sought, information which has been requested to be transmitted from or on behalf of any person entitled to access to records pursuant to this part, any updated medical information gathered pursuant to this part, court orders related to the opening of any sealed adoption records or sealed records, and personal identifying information concerning any persons subject to the provisions of this part.
  - (b) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to T.C.A. § 36-1-126(b)(2), which indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and such person's last known address, with whom the child was placed and such person's or entity's last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed.
  - (c) This record is confidential and shall be opened only as provided by T.C.A §§ 36-1-101 et seq. and this Chapter.
- (36) Record - Unless the context otherwise requires, any paper, report, document, or photograph, or other medium of preservation of information. For purposes of this Chapter, a record which may be available to an eligible person shall not include the remaining names of other persons on a list, log, or roll maintained by the Department or any other entity who are not, as determined by the Department, a part of the eligible person's request for service.
- (37) Resources - For purposes of these rules, resources shall include only the following assets of the requesting person or any member of his or her family unit:
- (a) Cash;
  - (b) Accounts in financial institutions, certificates of deposits, or any other evidence of financial assets;
  - (c) Stocks;
  - (d) Bonds;
  - (e) Securities;



- (f) Cash value of life insurance policies;
  - (g) Notes receivable;
  - (h) The equity value of any real property which is not the primary home, farm, or business operation of the family unit;
  - (i) The equity value of any vehicles owned by the adopted person, his or her siblings, or lineal descendants, or members of the family unit in excess of one vehicle per member of the family unit;
  - (j) The equity value of personal property of the family unit, in addition to subparagraphs (a)-(g) which exceeds \$10,000; and
  - (k) All assets which are shown to be pledged as security for loans or mortgages shall be excluded from countable resources.
- (38) Sealed Adoption Record:
- (a) The adoption record as it exists subsequent to its transmittal to the Department, or subsequent to its sealing by the court, pursuant to the requirements of T.C.A. § 36-1-126, or
  - (b) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to T.C.A. § 36-1-126(b)(2).
  - (c) This record is confidential and shall be opened only as provided by T.C.A §§ 36-1-101 et seq. and this Chapter.
  - (d) The sealed adoption record shall not, for purposes of release of the records pursuant to T.C.A. § 36-1-127 through 36-1-141 be construed to permit access, without a court order pursuant to T.C.A. § 36-1-138, to home studies or preliminary home studies or any information obtained by the Department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies which are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to T.C.A. § 36-1-138.
- (39) Sealed record:
- (a) Any records, reports or documents which are maintained at anytime by a court, a court clerk, a licensed or chartered child-placing agency, licensed clinical social worker, the Department, the Department of Health, or any other information source concerning the foster care or agency care placement, or placement for adoption, of a person by any branch of the Tennessee Children's Home Society authorized by Public Chapter 117(1919); or
  - (b) Any records, reports or documents maintained by a judge, a court clerk, the Department, a licensed or chartered child-placing agency, a licensed clinical social worker, the Department of Health, or any other information source which consists of adoption records or information about an adoption proceeding or

a termination of parental rights proceeding about an adopted person, or which contain information about a person who was placed for adoption but for whom no adoption order was entered or for whom an adoption proceeding was dismissed or for whom an adoption was not otherwise completed, or which contain information concerning persons in the care of any person or agency, and which records have otherwise been treated and maintained by those persons or entities under prior law, practice, policy, or custom as confidential, non-public adoption records, sealed adoption records, or post-adoption records of the person, or which may be otherwise currently treated and maintained by those persons or entities as confidential, non-public adoption records, sealed adoption records or post-adoption records of the person; or

- (c) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2).
- (40) Sibling - Anyone having a sibling relationship.
  - (41) Sibling relationship - The biological or legal relationship between persons who have a common biological or legal parent.
  - (42) Unit of Service - As used in this Chapter, a unit of service shall consist of the process required to open each record necessary to fulfill the request for a service. The fee for service charged pursuant to Section 0250-1-2-.04 shall be applied to each unit of service as stated in Section .04.
  - (43) Verification - The process of determining the correct identity and relationship of a person who seeks non-identifying information, or to update or transmit medical information and shall include any information contained in paragraph 44, and may include any other information satisfactory to the Department necessary to determine the person's status as an eligible person.
  - (44) Written request - An inquiry made in writing by a potentially eligible person or their legal representative seeking information from the records of an adopted person. Such request must be by letter with the original signature of the person making the request and shall include the following:
    - (a) Name, date of birth, address and telephone number of the person requesting service;
    - (b) Information, including legal documents or affidavits which establishes the person's legal relationship to a person involved in the adoption (adopted person, birth/adoptive/legal parent of the adopted person, birth or adoptive siblings, lineal descendant of the adopted person, birth or legal grandparents of any degree, birth or legal aunts and uncles of any degree, birth or legal first cousin, or the legal representatives of any person listed above);
    - (c) Any other information the Department requires to establish the person's identity;
    - (d) If the information in the written request does not establish the person's right to have access to the information, the Department will search the sealed adoption records, sealed records and post-adoption records, including those of other alleged siblings, if available, for information which may establish the person's right to have such access as an eligible person.

**Authority:** T.C.A. § 4-5-202, T.C.A. §§ 36-1-101 et seq.; Section 13 of Public Chapter 1079 (1996); Public Chapter 1054 (1996);

**0250-7-11-.03 PROCEDURES FOR RELEASE OF NON-IDENTIFYING INFORMATION AND/OR TRANSMITTAL OF UPDATED MEDICAL INFORMATION.**

- (1) A person seeking information pursuant to this Chapter shall file a written request with the Department's Post-Adoptions unit in care of:

Tennessee Department of Children's Services  
Post-Adoption Services  
436 Sixth Avenue North  
Nashville, TN 37243-1290

- (2) Requests for non-identifying information or transmittal of updated medical information will be processed on a first come, first serve basis in the order of receipt and after all other pending requests, unless the Department, in its sole discretion, determines that life threatening or medically terminal circumstances involving the requesting party warrant taking a particular request out of order, which reason shall be noted in the post-adoption record.
- (3) Establishment of Eligibility:
  - (a) Records may be opened by the Department to determine relationship of the adopted person and other eligible persons requesting access to the records.
  - (b) Proof of relationship may be shown by any satisfactory evidence to the Department.
  - (c) The Post-Adoption unit staff will review all records to verify the individual's identity and relationship to the adopted person and to determine eligibility of the person requesting to have non-identifying information from the record, or to update or transmit medical information.
  - (d) If relationship, verification of identity, or other facts necessary to permit release of non-identifying information or transmittal of medical information cannot be determined from any information made available to the Department, or if other circumstances pursuant to these rules, including denial of a fee waiver, require, then the person requesting service shall be notified by the Department that the request for service has been denied, the person shall be notified of the basis of denial in writing and the person may request a fair hearing pursuant to the Department's rules.
- (4) Non-identifying Information:
  - (a) When non-identifying information is noted in the record about an alleged birth parent/relative, the information will be released. Such information will be noted that the record only establishes an alleged relationship of parent or relative and the record does not, otherwise, establish any other relationship.
  - (b) Non-identifying information from sealed records, sealed adoption records or post-adoption records shall be granted by the Department to an eligible person as provided pursuant to this Chapter when such person's identity has been verified and such records exist. Non-identifying information from the home study will not be released.
  - (c) No request for non-identifying information shall be processed or provided until the fees required by 0250-1-2-.04 have been paid or a fee waiver determination required by 0250-1-2-.04 has been completed unless the Department shall determine, in its sole discretion, that access should be provided prior to payment of the fee or the fee waiver determination because of a life threatening medical emergency affecting the health, safety, or welfare of any person(s) or because of a medically terminal circumstance involving the requesting party.

- (d) Non-identifying information is available for an adopted person under 18 years of age by request of the adoptive parent or legal representative of the adopted person.
  - (e) The alleged parent/relative is not an eligible person to receive non-identifying information.
- (5) Transmittal of Updated Medical Information:
- (a) Pursuant to T.C.A. § 36-1-135, transmittal of updated medical information for eligible persons shall be provided by the Department at no charge.
  - (b) Updated medical information shall be transmitted by the Department to affected eligible persons when such person's identity has been verified and such records exist, provided that such information is in the form of written evidence from a licensed health care professional or from a licensed health care facility which explains the health care status of an eligible person and why the transmission of such information is necessary.
  - (c) No updated medical information will be transmitted on behalf of persons who do not meet eligibility requirements.
  - (d) When the records do not contain sufficient information to identify eligible individuals the Department will not conduct a search to update or transmit medical information.
  - (e) If the records indicate there are eligible individuals to or from whom the medical information should be transmitted, but the record does not establish their identity, the birth mother will be the source of information used to identify and locate these persons.
  - (f) The alleged parent/relative is not an eligible person for transmittal of updated medical information.
  - (g) Transmittal of updated medical information concerning a person under age eighteen (18) shall be made with the adoptive or legal parent or with the legal representative of the person.
  - (h) Transmittal of information shall be provided to the Department by means of a specific release for a stated purpose and the release shall be for a time period of four (4) months from the date the release is signed. (See Appendix).
  - (i) If any eligible person seeks additional or updated information for a medically established need as determined by written evidence from a licensed health care professional or a licensed health care facility pursuant to the requirements the Department shall contact the persons who have access to or who have or may have knowledge of such information and shall request the persons so contacted to provide such information to the Department for transmittal to the treating professionals or health care facility of the requesting party.
  - (j) Critical medical information (with identifying information deleted) provided by a licensed health care professional or a licensed health care facility will be shared when this information would assist in responding to a request.
  - (k) When transmittal of updated medical information is sought, the identities of any individual will not be released.

**Authority:** T.C.A. § 4-5-202, T.C.A. §§ 36-1-101 et seq.; Section 13 of Public Chapter 1079 (1996); Public Chapter 1054 (1996);

**0250-7-11-.04 FEES AND CHARGES FOR NON-IDENTIFYING INFORMATION.**

- (1) The fee for processing an initial written request for records pursuant to this Chapter shall be \$45.00.
- (2) Fee Waiver
  - (a) Fee waiver determinations will be made only upon request of the individual after notice by the Department of the fee requirement following receipt of the person's written request.
  - (b) No fee will be charged to any person who receives, or whose family unit currently receives, Temporary Assistance for Needy Families (TANF) or any other means-tested cash assistance program which may replace TANF, or Food Stamps or any other means-tested food assistance program which may replace the Food Stamp program, or if the person currently receives Medicaid or TennCare which is based upon a means test which places the person below Federal Poverty Guidelines as published in the Federal Register, or if the person receives any other means-tested medical assistance program which is based upon a means test which places the person below Federal Poverty Guidelines as published in the Federal Register, or if the person currently receives Supplemental Security Income (SSI) under Title XVI of the Social Security Act.
  - (c) The person requesting the fee waiver will be required to provide written verification of current eligibility for any of the above designated programs from the administering agency.
  - (d) If the person cannot show such verification of eligibility under the above programs, the person requesting the fee waiver will be required to complete a sworn declaration of the source and amount of income and resources on a form provided by the Department. If the person's family unit's income, based upon its size, does not exceed the current threshold level of income in the Federal Poverty Guidelines as published periodically in the Federal Register and if the family unit's non-exempt resources do not exceed \$1,000, the fee for search will be waived.
- (3) Payments for release of non-identifying information shall be made to the Fiscal Services Section of the Department of Children's Services, at the address given by the Department. Payments by mail may be made by personal check, cashier's check, or money order payable to the Department of Children's Services at this address. Cash will be accepted only when hand-delivered to the Fiscal Services Section at the address given by the Department.
- (4) All fees or other charges shall be deposited with the State Treasurer in accordance with the provisions of T.C.A. § 9-4-301.
- (5) Fees for service will be charged for each service requested on behalf of, or by each individual who requests service.

**Authority:** T.C.A. § 4-5-202, T.C.A. §§ 36-1-101 et seq.; Section 13 Public Chapter 1079 (1996); Public Chapter 1054 (1996)

**0250-7-11.05 APPENDIX-FORMS**

- (1) The following form is used when a request for medical information is made by an adopted person or by a biological or legal relative or the legal representative of the adopted person and they have provided written evidence from a licensed health care professional or a licensed health care facility of a medically established need for additional or updated medical information pursuant to T.C.A. § 36-1-135, and the Department of Children's Services, is contacting the persons who have access or who may have access to those records.

(2) This information shall be confidential and shall only be disclosed as provided by T.C.A. § 36-1-101 et seq.

(3) Form:

RELEASE OF INFORMATION FOR UPDATED MEDICAL INFORMATION  
TENNESSEE CODE ANNOTATED, § 36-1-135(c)

This Release of Information should be used when a request for medical information has been made by an adopted person or by a biological or legal relative or the legal representative of the adopted person and they have provided written evidence from a licensed health care professional or a licensed health care facility of a medically established need for additional or updated medical information about an adopted person, or their biological or legal relatives and the Department of Children’s Services, is contacting the persons who have access to or have or may have knowledge of such information. See, T.C.A. 36-1-135.

I, \_\_\_\_\_, (Name of Person Executing the Release) have been told by the Tennessee Department of Children’s Services that a person eligible to request updated medical, psychological, or psychiatric information has requested additional or updated medical, psychological, or psychiatric information to which I may have access or of which I may have knowledge.

I understand that if I have authority to release such information, that such release is entirely voluntary on my part.

1. I hereby release the following specific information to the Tennessee Department of Children’s Services and its authorized agents to provide such information about me to the treating professionals or health care facilities for the purpose of assisting with the medical, psychological, or psychiatric care of the requesting party (Attach Additional Sheets if Necessary):

\_\_\_\_\_

2. Names and addresses of Treating Professionals or Health Care Facilities from Whom the Information May Be Released Pursuant to My Approval (Attach Additional Names if Necessary):

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_
- f. \_\_\_\_\_

3. Other than the specific information given above, I wish to share other medical information about me and/or other relatives: (If information is given about other relatives, please specify their relationship to you.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. This Release Shall Expire in four (4) months from date of my signature unless otherwise stated here \_\_\_\_\_. Thereafter a new release must be executed for further release of additional or updated medical information.

This the \_\_\_ day of \_\_\_\_\_, 19\_\_ (20\_\_).

Please Print: \_\_\_\_\_  
Name of Person Signing Release

Signature: \_\_\_\_\_

*Authority: T.C.A. §§ 4-5-201, et seq., 36-1-101 et seq. 36-1-125, 36-1-135, and 36-1-141, Section 13 of Public Chapter 1079 (1996); Public Chapter 1054 (1996).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-22)

**DEPARTMENT OF CHILDREN'S SERVICES - 0250**  
**SOCIAL SERVICES DIVISION**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in conference room B on the seventh floor of the Cordell Hull Building located at 436 6th Avenue North, Nashville, Tennessee, 37243 at 1:30 p.m., central standard time on the 26th day of July, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 436 6th Avenue North, Nashville, Tennessee, 37243, 615-741-9175.

For a copy of this notice of rulemaking hearing, contact Jane Chittick, Director of Adoptions, 8<sup>th</sup> Floor, Cordell Hull Building, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243-1290. (615) 532-5626.

0250-7-12-.01 through 0250-7-12-.03 is amended by deleting 0250-7-12-.01 through 0250-7-12-.10 in its entirety and adding the following so that as amended the rule shall read:

**SUMMARY**  
**OF PROPOSED RULES**

**CHAPTER 0250-1-12**  
**ACCESS TO ADOPTION RECORDS FOR ADOPTIONS FINALIZED**  
**ON AND AFTER MARCH 16, 1951**

**AMENDED RULES**

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0250-7-12-.01 Purpose and scope of chapter	0250-7-12-.06 Procedures for filing Contact Veto or giving consent
0250-7-12-.02 Definitions	0250-7-12-.07 Fees and charges for records and access and filing of contact vetoes and other services
0250-7-12-.03 Procedures for provision of services	
0250-7-12-.04 Persons eligible to request and receive access to records	0250-7-12-.08 Appendix -Forms
0250-7-12-.05 Procedures for access to records	

### **0205-7-12-.01 PURPOSE AND SCOPE OF CHAPTER**

Describes the purpose, scope and format of rules. Establishes procedures for registering with the Contact Veto Registry and access to records and other information sources relating to adoptions or attempted adoptions of certain persons whose records, whether sealed, whether in any court record or whether in any post adoption record, if the adoption was finalized by the entry of an order of adoption or an order of dismissal or if the adoption petition was filed on or after March 16, 1951 or which adoption was otherwise never completed due to the abandonment as determined by the Department on or after March 16, 1951 of any further necessary activity related to the completion of the adoption.

This section further specifies that these rules do not govern access to records for persons whose adoptions were finalized by orders of adoption entered prior to March 16, 1951 or for persons who were subject to placement through the Tennessee Children's Home Society. These persons are given access to records pursuant to Chapter 1240-7-7.

### **0250-7-12-.02 DEFINITIONS**

Establishes the definitions related to eligible persons, records, and procedures for access to records, the Advance Notice Registry, and the Contact Veto Registry.

### **2050-7-12-.03 PROCEDURES FOR PROVISION OF SERVICES**

Establishes the procedures the Department of Children's Services will use to receive and respond to inquiries and requests for service and further establishes the provision of services for persons eligible to receive service under this Chapter.

Access to adoption records, sealed records, sealed adoption records or post adoption records shall be granted by the Department when a person has been determined to be eligible, when such records exist and when the eligible person has completed and signed a sworn statement regarding restrictions on contact, when written consents of the adopted persons or the birth mother who was the victim of rape or incest have been received, when the Advance Notice Registry has been cleared, and when payment of fees and all other requirements have been met.

Requests for access to records must be in writing to the Department's Post Adoption Unit. Requests will be processed on a first come first serve basis unless the Department in its sole discretion, determines that life threatening or medically terminal circumstances warrant taking a particular request out of order. No service will be provided until the fee is paid or a fee waiver has been completed.

This section further clarifies that after the initial search and response to the requesting party the Department will not conduct another search for six (6) months and that no more than two (2) record searches or contact attempts will be conducted by the Department.



**0250-7-12-.04 PERSONS ELIGIBLE TO REQUEST AND RECEIVE ACCESS TO RECORDS**

Defines persons eligible to request access to the records. Those persons include the adopted person twenty-one (21) years of age or older and his/her legal representative.

Birth/adoptive/step-parents, the siblings, lineal ancestors or lineal descendants or their legal representative may request and be eligible to receive access to the records with the written consent of the person or adopted person twenty-one (21) years of age for whom adoption records, sealed records, sealed adoption records or post adoption records exist. Without this consent, only non-identifying information will be released to these eligible persons as provided by T.C.A. § 36-1-133.

This section specifies that no access to identifying information in any adoption record, sealed record, sealed adoption record, post adoption record or adoption assistance record will be granted to anyone when the person for whom records are maintained is under the age of twenty-one (21), to any parent or pre-adoptive guardian or to a sibling, lineal ancestor or spouse or legal representative of the person whose parental rights were terminated for cause or to any person who is indicated in any record source to have been guilty of a crime of violence or neglect involving the person for whom records are maintained.

Persons must be verified eligible to have access, pay fees and both the adopted person and person requesting service must be twenty-one (21) years of age or older.

No identifying information will be released from any record source without the written consent of the birth mother when any of the record information indicates that with respect to the person for whom records are maintained was born as a result of rape or incest.

**0250-7-12-.05 PROCEDURES FOR ACCESS TO RECORDS**

Establishes procedures for access to records. The Department will determine eligibility and will request the eligible person to sign a sworn statement acknowledging restrictions on contact. When eligibility for access to records cannot be determined, the Department will notify the requesting party of the denial.

The Department will search the Advance Notice Registry prior to the release of any records for persons who are identified in the records and desire advance notification of the impending release of records. Such persons will be notified in writing 15 days prior to release of records.

The Department will search the Contact Veto Registry for persons with whom contact is sought, will conduct a diligent search for persons not registered and will contact persons registered who have filed a contact veto or given consent for contact to give persons the opportunity to register or vary their desires for contact or when and under what conditions contact is permitted.

This section further clarifies the procedures for the authorization of release of information by other information sources, the distribution of photographs, procedures to be followed when it is determined that the adopted person is deceased or disabled, when the review of the record indicates information pertaining to other individuals has been misfiled, for the removal of home studies from foster and adoptive records and when no sealed record or sealed adoption records exists under the supervision of the Department.

This section also establishes persons with whom contact by the Department will be made. No contact will be made with an adopted person or person for whom records are maintained who is under twenty-one (21) years of age. Should contact be desired with a birth or legal relative under the age of twenty-one (21) the Department's contact will be made with the minor's parents or legal representative regarding their decisions/desires for contact.

**0250-7-12-.06 PROCEDURES FOR FILING CONTACT VETO OR GIVING CONSENT**

Establishes procedures for filing with the Contact Veto Registry. This section defines the persons eligible to register: the adopted person's spouse, the birth/step/legal parent, the birth or adoptive sibling, the lineal ancestors or lineal descendants or the legal representative of these persons.

Requests to register, vary, alter or withdraw a contact veto or a consent to contact is made to the Department in writing, by phone or in person. Registration forms will be provided and such registrations will be accepted by a completed, signed form accompanied with the fee.

This section also specifies who may be excluded and automatically included in a registration with the Contact Veto Registry and sets out the prohibitions of the contact veto.

**0250-7-12-.07 FEES AND CHARGES FOR RECORDS ACCESS AND FILING OF CONTACT VETOES AND OTHER SERVICES**

Establishes the fees for determining eligibility for access to records under this chapter, registering or varying form on the Advance Notice Registry, registering, varying, altering or withdrawing form the Contact Veto Registry, fees for searches for persons with whom contact is sought and copying of the record. This section also provides for the fee waiver procedures to be used by the Department in providing service to those persons determined eligible to receive service at no cost.

**0250-7-12-.08 APPENDIX - FORMS**

Establishes the forms used in registering with the Contact Veto Registry by birth relatives and adoptive relatives and establishes the sworn statement required to be signed by any person gaining access to the adoption records, sealed records, sealed adoption records or post adoption records.

**Authority:** *T.C.A. § 4-5-209; Section 13 of Public Chapter 1079 (1996); Public Chapter 1068 (1996); Public Chapter 1054 (1996); T.C.A. § 36-1-101 et. seq.*

For a copy of the entire text of these rules, contact Mary E. Walker, General Counsel, Tennessee Department of Children's Services, Tennessee Tower, 25<sup>th</sup> Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243, Telephone Number: (615) 741-7236.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-19)

**DEPARTMENT OF CHILDREN'S SERVICES - 0250  
SOCIAL SERVICES DIVISION**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room B in the Cordell Hull Building located at 436 6<sup>th</sup> Avenue North, Nashville, TN 37243 at 1:30 p.m. on the 19th day of July, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7<sup>th</sup> floor of the Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Jane Chittick, 436 6<sup>th</sup> Avenue North, 8<sup>th</sup> Floor, Nashville, TN 37243-1290; (615) 532-5626.

**SUMMARY OF PROPOSED RULES**

**CHAPTER 0250-7-13  
ADOPTION PROCESS FORMS**

**NEW RULES**

**TABLE OF CONTENTS**

0250-7-13-.01 Purpose, Scope and Format of Rules	0250-7-13-.08 Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents before a United States Foreign Service Officer or Officer of the United States Armed Forces in a Foreign Country.
0250-7-13-.02 Medical/Social History of Child's Family Form.	0250-7-13-.09 Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services by an Inmate of a State or Federal Penitentiary.
0250-7-13-.03 Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services in a Tennessee Court.	0250-7-13-.10 Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents by an Inmate of a State or Federal Penitentiary.
0250-7-13-.04 Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents in a Tennessee Court.	0250-7-13-.11 Parental Consent Form Used in Confirmation of Consent Proceeding before the Court.
0250-7-13-.05 Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services in Court in Another State or Territory.	0250-7-13-.12 Certification of Social Counseling Form.
0250-7-13-.06 Surrender Documents for Use in Surrenders Directly to Prospective Adoptive Parents in a Court in Another State or Territory.	0250-7-13-.13 Certification of Legal Counseling.
0250-7-13-.07 Surrender Documents for Use in Surrenders to a Licensed Child-Placing Agency or the Tennessee Department of Children's Services before United States Foreign Service Officer or Officer of the United States Armed Forces in a Foreign Country.	0250-7-13-.14 Payment Disclosure Form.
	0250-7-13-.15 Adoption Consent Form for Minor Who is Fourteen (14) Years of Age.
	0250-7-13-.16 Adoption Consent Form for Use by Guardian Ad Litem for Minor Who is Fourteen (14) Years of Age and Who is Mentally Disabled.

0250-7-13-.17 Adoption Consent Form for Use by Guardian Ad Litem for Adult Who is Being Adopted and Who is Mentally Disabled.

0250-7-13-.18 Fee Disclosure Form for Agency or Licensed Clinical Social Worker.

0250-7-13-.19 Fee Disclosure Form for Attorney.

0250-7-13-.20 Release of Information Form for Updated Medical Information.

0250-7-13-.21 Consent by a Licensed Child-Placing Agency or by the Tennessee Department of Children's Services for Adoption of a Child

### SUMMARY

0250-7-13-.01 Describes the purpose, scope and format of rules, and includes information about the mandatory nature of the use of the forms and how they may be obtained.

0250-7-13-.02 Establishes a form for obtaining from a child's parents the medical/ social history of child's family to preserve information about the child's heredity and prior biological family medical and social history.

0250-7-13-.03 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption to a licensed child-placing agency or the Tennessee Department of Children's Services in a Tennessee court.

0250-7-13-.04 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption directly to prospective adoptive parents in a Tennessee court.

0250-7-13-.05 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption to a licensed child-placing agency or the Tennessee Department of Children's Services in a court in another state or territory.

0250-7-13-.06 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption directly to prospective adoptive parents in a court in another state or territory.

0250-7-13-.07 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption to a licensed child-placing agency or the Tennessee Department of Children's Services before a United States foreign service officer or officer of the United States armed forces in a foreign country.

0250-7-13-.08 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption directly to prospective adoptive parents before a United States foreign service officer or officer of the United States armed forces in a foreign country.

0250-7-13-.09 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption to a licensed child-placing agency or the Tennessee Department of Children's Services by an inmate of a state or federal penitentiary.

0250-7-13-.10 Establishes a form for use in surrenders by a parent or legal guardian of a child for adoption directly to prospective adoptive parents by an inmate of a state or federal penitentiary.

0250-7-13-.11 Establishes a form to be used in confirmation before the Court of a parental consent given in an adoption proceeding prior to termination of parental rights.

0250-7-13-.12 Establishes a form for the certification in an adoption proceeding of social counseling if counseling regarding the issues surrounding the decision to place a child for adoption is requested by the surrendering parent or legal guardian of the child.

0250-7-13-.13 Establishes a form for the certification in an adoption proceeding of legal counseling if legal advice surrounding the decision to place a child for adoption is requested by the surrendering parent or legal guardian of the child.

0250-7-13-.14 Establishes a payment disclosure form for use in the adoption proceeding to certify the payments made in connection with the birth or placement of a child for adoption.

0250-7-13-.15 Establishes an adoption consent form for minor who is fourteen (14) years of age to sign before the adoption of a 14 year old can be approved by the court.

0250-7-13-.16 Establishes an adoption consent form for use by a guardian ad litem to give consent before the adoption is approved by the court for a minor who is fourteen (14) years of age and who is mentally disabled.

0250-7-13-.17 Establishes an adoption consent form for use by guardian ad litem, guardian, or conservator to give consent before the adoption is approved by the court for an adult who is being adopted and who is mentally disabled.

0250-7-13-.18 Establishes a fee disclosure form for a licensed child-placing agency or licensed clinical social worker to be filed at the time the adoption order is entered to disclose the fees charged the adoptive parents by a licensed child-placing agency or licensed clinical social worker.

0250-7-13-.19 Establishes a fee disclosure form for an attorney to be filed at the time the adoption order is entered to disclose the legal fees charged the adoptive parents by the attorney.

0250-7-13-.20 Establishes a form for the release of updated medical information to persons eligible to receive such information from prior biological relatives.

0250-7-13-21 Establishes a form for consent to adoption of a child by a licensed child-placing agency, the Tennessee Department of Children's Services, or its successor agency, or other agency.

The rules also indicate the confidential nature of the information pursuant to the requirements of the statute and indicate the distribution of the forms to the parties and the agencies involved.

**Authority:** T.C.A. §§ 4-5-201 et seq, 36-1-101 et seq, Public Chapter 532 (1995), Executive Order #6, January 12, 1996.

For a copy of the entire text of these rules, contact Jane Chittick, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243-1290; (615) 532-5627.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-18)

**DEPARTMENT OF CHILDREN'S SERVICES - 0250  
FOSTER CARE DIVISION**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room 7A on the 7<sup>th</sup> floor of the Cordell Hull Building, located at 436 6<sup>th</sup> Avenue North, at 2:30 p.m. on the 12th day of July 12<sup>th</sup>, 2001.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 436 6th Avenue North, Nashville, Tennessee, 37243, 615-741-9175.

For a copy of this notice of rulemaking hearing, contact Patsy D. Napier, Program Manager, Foster Care Services, Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243; (615) 532-5615.

## SUBSTANCE OF PROPOSED RULES

### RULEMAKING HEARING RULES OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES PROGRAM SERVICES DIVISION

#### CHAPTER 0250-7-15 FOSTER PARENTS' BILL OF RIGHTS

#### NEW RULES TABLE OF CONTENTS

0250-7-15-.01	Purpose of Chapter	0250-7-15-.03	Procedures for Foster Parents' Bill of Rights
0250-7-15-.02	Definitions for Purposes of This Chapter		

#### **0250-7-15-.01 PURPOSE OF CHAPTER**

- (1) The purpose of this chapter is to provide, in compliance with Tennessee Code Annotated § 37-2-415, procedures for the selection, training, and implementation of Foster Parent Advocates in conjunction with the Foster Parents' Bill of Rights. It also provides procedures for foster parents, with the assistance of the Foster Parents' Advocates, to file grievances and appeals when necessary, and when the foster parents are not in agreement with actions taken by the Department of Children's Services.

*Authority:* T.C.A. §§ 37-5-105 and 37-2-415.

#### **0250-7-15-.02 DEFINITIONS FOR PURPOSES OF THIS CHAPTER**

- (1) Advocate - An advocate is a specially trained foster parent, appointed by the President and the Board of Directors of the Tennessee Foster Care Association and charged with the responsibility of interpreting Department of Children's Services' policy and procedures and assisting foster parents in filing grievances and appeals with the Department of Children's Services.
- (2) Foster Parent - A person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care in a private residence for children who, for various reasons, can no longer remain in their own homes, or the prospective adoptive parents who have received a child as a result of the surrender of parental rights, a parental consent, or as the result of a termination of parental rights.

- (3) Department - The Tennessee Department of Children's Services or any of its divisions or units.

*Authority: T.C.A. § 36-1-102 (16), T.C.A. § 36-1-102 (21)*

### **0250-7-15-.03 PROCEDURES FOR FOSTER PARENTS' BILL OF RIGHTS**

- (1) Selection of Advocates in child abuse/neglect investigation involving the foster parent(s):
  - (a) The Advocate(s) shall be appointed by the president of the Tennessee Foster Care Association, with the approval of the Board of Directors of the Tennessee Foster Care Association.
- (2) Qualifications of the Advocates:
  - (a) Each potential Advocate must complete an application form, and supply names of references.
  - (b) The Advocate must be an approved foster parent in good standing with the Tennessee Department of Children's Services.
  - (c) The Advocate must be a member in good standing of the Tennessee Foster Care Association.
  - (d) The Advocate must have completed MAPP (Model Approach to Partnerships in Parenting) training or equivalent training as determined by the Department of Children's Services.
  - (e) The Advocate must be able to communicate effectively with foster parents as well as the Department of Children's Services.
- (3) The Advocacy Board:
  - (a) An advisory board to the advocates shall be appointed by the president of the Tennessee Foster Care Association, with the approval of the Board of Directors of the Tennessee Foster Care Association.
  - (b) The Advocacy Board shall consist of the state president of the Tennessee Foster Care Association, at least one ex-officio member from the Department of Children's Services Central Office Program staff, one representative from the certified MAPP or foster parent trainers, and at least two foster parents.
  - (c) All members of the Advocacy Board shall receive the Advocate's training, as set out in part 4.
- (4) Advocates' Training:
  - (a) Each Advocate selected shall receive fifteen (15) hours of pre-service training, consisting of, but not limited to, Child Protective Services policy and procedures; Risk Oriented Case Management information; MAPP Foster Parent training information; Foster Care Board Payment (ChiPFinS) information, residential case manager's policy and procedures, Advocate protocol, communication techniques, and record-keeping.
  - (b) The training shall be conducted by the Advocacy Board, in conjunction with the Department of Children's Services central office program staff.

- (c) Each Advocate will receive 12 hours in-service training per year, including program policy and procedure updates on both foster care and child protective services.
- (5) Advocacy Program Intake:
- (a) Each Advocate's name and telephone number will be available via the Fosterer, the newsletter of the Tennessee Foster Care Association, and will be disseminated by the Department of Children's Services to all foster parents.
  - (b) Upon receipt of a call or complaint, the Advocate must return the complainant's call within 72 hours, and obtain information on the nature of the complaint. It is anticipated that many questions regarding policy and procedures can be answered in one telephone call. However, if further investigation is warranted, the Advocate will arrange for the foster parent complainant to sign a release of information so that the Advocate can talk to the Department of Children's Services staff and other relevant parties and complete an assessment of the complaint.
  - (c) The Advocate may conduct personal interviews, may accompany the foster parents to scheduled meeting.
- (6) Record-Keeping:
- (a) Each Advocate will be responsible for keeping a record of all contacts on behalf of a foster parent complainant.
  - (b) The Department of Children's Services shall be given access, upon request, to the complaint file.
- (7) Complaints and Mediation:
- (a) Any foster parents who determines that the Department of Children's Services is in violation of the Foster Parents' Bill of Rights, T. C. A. § 37-2-415, or otherwise has a complaint should first discuss their concerns with the Residential Case Manager assigned to the foster home and attempt work out an agreement. This step may involve showing the foster parent the written policy and procedures relative to approval of a foster home or any ongoing casework activities.
  - (b) If the Residential Case Manager and the foster parent cannot reach an understanding, then the foster parent shall notify the Team Leader and request assistance from the Team Leader in mediating the conflict between the Residential Case Manager and the foster parent.
- (8) Grievances:
- (a) If the Residential Case Manager and the Team Leader cannot make correction or adjustments, the foster parent shall notify the Team Coordinator in writing of their concerns, and request an appointment with the Team Coordinator.
  - (b) A scheduled meeting with the Team Coordinator and all parties must take place within 7 working days of the receipt of the foster parent complaint.
  - (c) The outcome of the meeting with the Team Coordinator shall be documented in writing within 2 working days of the meeting; responsibility for the documentation is with the Residential Case Manager with the supervisory approval and signature of the Team Leader.



- (d) The Team Coordinator must then make a recommendation in writing for corrective action ( or possibly no action.) Copies of the Team Coordinator's decision must be forwarded to all participants.
- (9) Appeals:
- (a) Within 7 working days of the grievance hearing, the foster parents may elect to file an appeal with the Regional Administrator of the Department of Children's Services.
  - (b) Upon receipt of an appeal letter, the Regional Administrator reviews all the information, and either accepts the recommendation of the Team Coordinator, or, at their discretion, may schedule an additional interview with the foster parent(s), DCS staff, and/or other relevant parties.
  - (c) Copies of the Regional Administrator's approval or modification of the Team Coordinator's recommendation must be forwarded to all participants.

**Authority:** T. C. A. § 37-2-415 (23), (25).

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of April, 2001. (04-03)

### **THE BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS- 0450**

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. 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. (CDT) on the 18<sup>th</sup> day of June, 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 0450-1-.01, Definitions, is amended by adding the following language as new paragraph (26) and renumbering the remaining paragraphs accordingly:

- (26) Mental health/community agency setting – For purposes of the supervision requirements of this chapter, a clinical setting as defined in paragraph (11).

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, and 63-22-120.

Rule 0450-2-.01, Definitions, is amended by deleting paragraph (36) in its entirety and substituting instead the following language, so that as amended, the new paragraph (36) shall read:

- (36) Supervision
- (a) The ongoing, direct clinical review, for the purpose of training or teaching, by an approved supervisor who monitors the performance of one (1) or two (2) person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.
- (b) Group supervision – No more than one half (½) of the required supervision hours may be in a group setting consisting of no more than seven (7) supervisees or as otherwise defined by the AAMFT.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-106, 63-22-107, and 63-22-115.

Rule 0450-2-.04, Qualifications for Licensure, is amended by deleting part (1) (c) 2. in its entirety and substituting instead the following language, so that as amended the new part (1) (c) 2. shall read:

- (1) (c) 2. The degree may be acceptable in a related subject field, so long as the degree contains the following coursework (all courses must be at least one semester in length):
- (i) Human Development and Personality - 3 courses
  - (ii) Marriage and Family Studies - 3 courses
  - (iii) Marriage and Family Therapy - 3 courses
  - (iv) Research - 1 course
  - (v) Professional Ethics - 1 course
  - (vi) Assessment and diagnosis of cognitive, affective and behavioral problems and dysfunctions in the DSM IV T.R. (or its successor) nomenclature - 1 course

- (vii) Supervised practicum/internship which includes experience in the assessment, diagnosis, and treatment of cognitive, affective and behavioral problems or dysfunctions in the DSM IV T.R. (or its successor) nomenclature, pursuant to T.C.A. § 63-22-106.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, and 63-22-107.

Rule 0450-2-.10, Supervision, is amended by adding the following language as new paragraph (5):

- (5) Upon completion of the post-masters supervision required by subpart 0450-2-.04 (1) (c) 2. (vii), and upon the receipt of a license issued pursuant to this chapter, the new licensee may practice marriage and family therapy by providing mental health services without further supervision.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, 63-22-107, and 63-22-115.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of April, 2001. (04-13)

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

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 18th day of June, 2001.

Written comments will be included in the hearing records if received by the close of business June 18, 2001, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to (June 18, 2001) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298)

If you have any questions about the origination of this rule, you may contact Mrs. Vicki Lowe at 1-800-511-7991. For complete copies of the text of the notice, please contact Mr. Malcolm Butler, Department of Environment and Conservation, 8th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, telephone 615-532-0600.

**SUBSTANCE OF PROPOSED CHANGES****CHAPTER 1200-3-29  
LIGHT-DUTY MOTOR VEHICLE INSPECTION AND MAINTENANCE**

Chapter 1200-3-29 Light-Duty Motor Vehicle Inspection and Maintenance is amended in five (5) respects as follows:

Paragraph (1) of rule 1200-3-29-.03 Motor Vehicle Inspection Requirements is amended by substituting for the present paragraph (1), a new paragraph so that, as amended, the new paragraph (1) shall read:

- (1) All of the light-duty motor vehicles registered in any county that has been designated by the Board to have a motor vehicle inspection and maintenance program or directly with the motor vehicle division of the Tennessee Department of Revenue pursuant to T.C.A. § 55-4-207 and used within or assigned to a user within that county, except those exempted by Rule 1200-3-29-.04, are required to be inspected annually for compliance with emissions performance and anti-tampering test criteria in Rules 1200-3-29-.05 and 1200-3-29-.06. Owners of vehicles so inspected are required to obtain a Certificate of Compliance. A Certificate of Compliance shall be valid for 90 days following the date of issuance, except for those registered pursuant to T.C.A. § 55-4-207, which shall be valid for one year.

Paragraph (2) of rule 1200-3-29-.03 1200-3-29-.03 Motor Vehicle Inspection Requirements is amended by substituting for the present paragraph (2), a new paragraph so that, as amended, the new paragraph (2) shall read:

- (2) Any light-duty vehicle which is owned or operated by an agency of the federal government and which is operated on a federal installation located in any county that has been designated by the Board to have a motor vehicle inspection and maintenance program is required to be inspected annually for compliance with emissions performance and anti-tampering criteria in Rules 1200-3-29-.05 and 1200-3-29-.06. This requirement shall not apply to a vehicle, which is on the facility for less than a total of 60 days during the calendar year. The federal installation shall provide documentation of proof of compliance to the Technical Secretary. The documentation at a minimum shall include a list of all subject vehicles showing proof of compliance. An updated list of the subject vehicles shall be submitted to the Technical Secretary annually.

Paragraph (4) of rule 1200-3-29-.03 Motor Vehicle Inspection Requirements is amended by substituting for the present paragraph (4), a new paragraph so that, as amended, the new paragraph (4) shall read:

- (4) All light-duty motor vehicles required to obtain a Certificate of Compliance except those vehicles contained in a fleet which has a valid fleet inspection permit and those vehicles registered in any county that has been designated by the Board to have a motor vehicle inspection and maintenance program but not subject to either the Wheel Tax or the Motor Vehicle Regulatory License requirements shall obtain a valid Certificate of Compliance within 90 days prior to the required date for payment of the wheel tax or the motor vehicle regulatory license fee as appropriate to the class of motor vehicle.

Paragraph (5) of rule 1200-3-29-.03 Motor Vehicle Inspection Requirements is amended by substituting for the present paragraph (5), a new paragraph so that, as amended, the new paragraph (5) shall read:

- (5) All light-duty motor vehicles required to obtain a Certificate of Compliance that are contained in a fleet having a valid fleet inspection permit, operated on a Federal installation registered in any county that has been designated by the Board to have a motor vehicle inspection and maintenance program or vehicles registered in any county that has been designated by the Board to have a motor vehicle inspection and maintenance program in order to attain and maintain compliance with national ambient air quality standards within any area of Tennessee or an adjoining state but exempt from the Wheel Tax and Motor Vehicle Regulatory License requirements shall obtain a valid Certificate

of Compliance within 90 days prior to a compliance date for that particular motor vehicle. The Technical Secretary shall establish a schedule of compliance dates for such vehicles.

*Authority:* T.C.A. §§ 68-201-105 and 4-5-201 et. seq.

Paragraph (1) of rule 1200-3-29-.10 Motor Vehicle Inspection Fee is amended by substituting for the present paragraph (1), a new paragraph so that, as amended, the new paragraph (1) shall read:

- (1) There shall be a fee set by the Tennessee Air Pollution Control Board for the Inspection & Maintenance program. The fee shall be for each emission test and payable at the time of inspection by the operator of the vehicle subject to the testing.

*Authority:* T.C.A. §§ 68-201-105 and 4-5-201 et. seq.

This notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2001. (04-15)

**DEPARTMENT OF HEALTH - 1200  
MEDICAL LABORATORY BOARD**

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-29-105. 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. (CDT) on the 3<sup>rd</sup> day of July, 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 1200-6-1-.06, Fees, is amended by deleting paragraphs (2) and (3) in their entirety, and substituting instead the following language, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Medical Laboratory Board.
  - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.
- (3) Fee Schedule:
- |                      | Amount                |
|----------------------|-----------------------|
| (a) Application      | \$ 50.00              |
| (b) Examination      | \$ 90.00              |
| (c) Late Renewal     | \$ 60.00              |
| (d) Renewal          | \$ 90.00 (Biennially) |
| (e) State Regulatory | \$ 10.00 (Biennially) |

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 68-29-105, 68-29-117, and 68-29-119.

Rule 1200-6-3-.02, Licensing Procedures, is amended by deleting paragraphs (4) and (5) in their entirety, and substituting instead the following language, so that as amended, the new paragraphs (4) and (5) shall read:

- (4) Fees – The fees established by the Board pursuant to the Tennessee Medical Laboratory Act (T.C.A. §§ 68-29-101, et seq.) for licensure are as follows:
- (a) Initial Laboratory Application Fee – This fee is nonrefundable. \$1000.00
  - (b) License Laboratory Renewal Fee – To be paid annually by all licensees. \$1000.00
  - (c) Late Laboratory License or Collection Station Renewal Penalty Fee – To be paid when a licensee fails to timely renew annual license. \$ 500.00
  - (d) Annual State Regulatory Fee – To be paid by all licensees. \$ 5.00
  - (e) Replacement License (other than 1200-6-3-.03) when lost or misplaced. \$ 50.00
  - (f) Initial Collection Station Application Fee \$ 700.00
  - (g) Collection Station Renewal Fee \$ 700.00

- (5) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Medical Laboratory Board.
  - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

*Authority:* T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 69-29-105, and 68-29-113.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of April, 2001. (04-09)

**DEPARTMENT OF HEALTH - 1200  
TENNESSEE MEDICAL LABORATORY BOARD**

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of new rules and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105. 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. (CDT) on the 3<sup>rd</sup> day of July, 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.

## SUMMARY OF PROPOSED RULES

### NEW RULES

#### CHAPTER 1200-6-3 GENERAL RULES GOVERNING MEDICAL LABORATORIES

#### TABLE OF CONTENTS

1200-6-3-.01	Definitions	1200-6-3-.11	Facilities, Safety, Infectious and Hazardous Waste Disposal
1200-6-3-.02	Licensing Procedures	1200-6-3-.12	Referral of Cultures to the Department of Health
1200-6-3-.03	Change in the Location, Director, Supervisor, Owner, or Testing in a Medical Laboratory	1200-6-3-.13	Personnel Policies
1200-6-3-.04	Inspections – Reports	1200-6-3-.14	Personnel Requirements for a Medical Laboratory
1200-6-3-.05	Licensure Discipline, Assessment of Costs, and Subpoenas	1200-6-3-.15	Special Regulations for ASTC, Blood Donor Centers and Plasmapheresis Centers
1200-6-3-.06	Minimum Standards	1200-6-3-.16	Alternate Site Testing
1200-6-3-.07	Participation in Proficiency Testing	1200-6-3-.17	Waived Testing
1200-6-3-.08	Patient Test Management	1200-6-3-.18	Collection Stations
1200-6-3-.09	Quality Control		
1200-6-3-.10	Performance Improvement Program		

These new rules represent a proposed total rewrite of Chapter 1200-6-3, General Rules Governing Medical Laboratories. The current chapter of rules is proposed to be repealed, as indicated.

The proposed new chapter includes all amendments to the current chapter that have either become effective in the past two (2) years or are anticipated to become effective in 2001.

The proposed new chapter is a seventy-two (72) page document.

#### **1200-6-3-.01 DEFINITIONS.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, and 68-29-105.

#### **1200-6-3-.02 LICENSING PROCEDURES.**

Paragraph (4) of this rule includes a proposed fee increase.

*Authority:* T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 69-29-105, 68-29-111, 69-29-112, 69-29-113, 69-29-114, and 68-29-115.

#### **1200-6-3-.03 CHANGE IN LOCATION, DIRECTOR, OWNER, SUPERVISOR OR TESTING IN A MEDICAL LABORATORY.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-112, and 68-29-114.

#### **1200-6-3-.04 INSPECTIONS – REPORTS.**

*Authority:* T.C.A. §§ 4-5-204, 4-5-204, 68-29-105, 68-29-106, and 68-29-113.



**1200-6-3-.05 LICENSURE DISCIPLINE, ASSESSMENT OF COSTS, AND SUBPOENAS.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 4-5-311, 68-29-104, 68-29-105, 68-29-126, 68-29-128, 68-29-129, 68-29-130, 68-29-131, 68-29-132, 68-29-136, and 68-29-405.

**1200-6-3-.06 MINIMUM STANDARDS.** Each laboratory shall comply with the standards as set forth in 42 C. F. R. Part 493 of the CLIA Regulations. These standards are deemed to be the minimum standard acceptable to the Board. Failure to meet the CLIA standards may result in disciplinary action as defined in Rule 1200-6-3-.05.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, 68-29-105, and 68-29-126.

**1200-6-3-.07 PARTICIPATION IN PROFICIENCY TESTING.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

**1200-6-3-.08 PATIENT TEST MANAGEMENT.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-107, 68-29-121, and 68-29-124.

**1200-6-3-.09 QUALITY CONTROL.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-125.

**1200-6-3-.10 PERFORMANCE IMPROVEMENT.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

**1200-6-3-.11 FACILITIES, SAFETY, INFECTIOUS AND HAZARDOUS WASTE DISPOSAL.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

**1200-6-3-.12 REFERRAL OF CULTURES TO THE DEPARTMENT OF HEALTH.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-107.

**1200-6-3-.13 PERSONNEL POLICIES.** Personnel policies, practices, and procedures that adequately support sound laboratory practice shall be available in written form. A current record shall be maintained on each employee and shall include evidence of current licensure, and a resume of training and experience, competency assessment, annual safety training and annual review of policies and procedures. Employee health records may be maintained in a separate file.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

**1200-6-3-.14 PERSONNEL REQUIREMENTS FOR A MEDICAL LABORATORY.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-114, and 68-29-118.

**1200-6-3-.15 SPECIAL REGULATIONS FOR ASTC, BLOOD DONOR CENTERS, AND PLASMAPHERESIS CENTERS.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, and 68-29-105.

**1200-6-3-.16 ALTERNATE SITE TESTING.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, and 68-29-105.

**1200-6-3-.17 WAIVED TESTING.**

“Waived” means those laboratory tests, as defined by the Board, which may be performed by individuals not licensed under the Medical Laboratory Act, and which pose no reasonable risk of harm if performed incorrectly.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-104 and 68-29-105.

**1200-6-3-.18 COLLECTION STATIONS.**

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 68-29-104 and 68-29-105.

**REPEALS**

1200-6-3-.01 Definitions, is repealed.

1200-6-3-.02, Licensing Procedures, is repealed.

1200-6-3-.03, Changes in the Location, Director, Supervisor, Owner, or Testing of Medical Laboratory, is repealed.

1200-6-3-.04, Inspections – Reports, is repealed.

1200-4-3-.05, Licensure Discipline, Assessment of Costs, and Subpoenas, is repealed.

1200-6-3-.06, Participation in Proficiency Testing, is repealed.

1200-6-3-.07, Patient Test Management, is repealed.

1200-6-3-.08, Quality Control, is repealed.

1200-6-3-.09, Quality Assurance, is repealed.

1200-6-3-.10, Facilities, Safety, Infectious Waste Disposal, is repealed.

1200-6-3-.11, Referral of Cultures to the Department, is repealed.

1200-6-3-.12, Personnel Policies, is repealed.

1200-6-3-.13, Personnel Requirements for a Medical Laboratory, is repealed.

1200-6-3-.14, Special Regulations for ASTC, Blood Donor Centers and Plasmapheresis Centers, is repealed.

1200-6-3-.15, Alternate Site Testing, is repealed.

1200-6-3-.16, Waived Testing, is repealed.

Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor., Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

The notice of Rulemaking hearing set out herein was properly filed in the Department of State on the 23rd day of April, 2001. (04-12)

**BOARD OF MEDICAL EXAMINERS' - 0880  
COMMITTEE FOR CLINICAL PERFUSIONISTS  
DIVISION OF HEALTH RELATED BOARDS**

There will be a hearing before the Tennessee Board of Medical Examiners' Committee for Clinical Perfusionists to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, et seq., 63-6-101, and 63-28-101, et seq. 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 (CDT) on the 22<sup>nd</sup> day of June, 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**

**NEW RULES**

**CHAPTER 0880-11**

**GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF CLINICAL PERFUSIONISTS**

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0880-11-.03 Reserved	0880-11-.14 Provisional License
0880-11-.04 Reserved	0880-11-.15 Disciplinary Grounds, Actions, and Civil Penalties
0880-11-.05 Licensure Process	0880-11-.16 Replacement License
0880-11-.06 Fees	0880-11-.17 Change of Name and/or Address
0880-11-.07 Application Review, Approval, and Denial	0880-11-.18 Complaints and Investigations
0880-11-.08 Examinations	0880-11-.19 Committee Officers, Consultants, Records, and Declaratory Orders
0880-11-.09 License Renewal	0880-11-.20 Advertising
0880-11-.10 Supervision	
0880-11-.11 Retirement and Reactivation of License	

**0880-11-.01 DEFINITIONS.** As used in these rules, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) ABCP – American Board of Cardiovascular Perfusion or its successor organization.
- (2) ACPE – Accreditation Committee for Perfusion Education or its successor organization.
- (3) Administrative Office - The office of the administrator assigned to the Board and Committee located on the First Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee 37247-1010.
- (4) Administrative Revocation - An Administrative action taken pursuant to Rule 0880-11-.09 when a license holder fails to timely renew his/her license and all other options available have been ignored. A license holder whose license has been administratively revoked has been provided an opportunity for a hearing and as such is officially unlicensed and cannot lawfully continue to practice as a clinical perfusionist in Tennessee. Licenses administratively revoked may be renewed upon meeting the conditions stated in Rule 0880-11-.09.
- (5) AmSECT - American Society of Extra-Corporeal Technology.
- (6) Board - Tennessee Board of Medical Examiners.
- (7) C.A.H.E.A. - The Committee on Allied Health Education and Accreditation of the American Medical Association or its successor accrediting agency.
- (8) Committee – The Committee for Clinical Perfusionists.
- (9) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Committee receives administrative support.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-114, and 63-28-118.

**0880-11-.02 SCOPE OF PRACTICE.** The scope of practice of all clinical perfusionists is governed by T.C.A. § 63-28-102 (6).

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-102, and 63-28-118.

**0880-11-.03 RESERVED.****0880-11-.04 RESERVED.**

**0880-11-.05 LICENSURE PROCESS.** To become licensed as a clinical perfusionist in Tennessee a person must comply with the following procedures and requirements:

- (1) Grandfathering – Any person who is currently actively practicing perfusion is eligible to receive a license as a clinical perfusionist upon compliance with all subparagraphs contained in paragraph (2) except subparagraphs (d) and (i), and upon further showing satisfactory proof of the existence on, January 1, 2000, of all of the following requirements:
  - (a) Four (4) years experience within the immediately preceding six (6) years (between January 1, 1994 and January 1, 2000) operating cardiopulmonary bypass systems during cardiac surgical cases in a licensed health care facility.
  - (b) That the experience obtained in that four (4) year period was obtained while the person’s primary functions in that health care facility was operation of the cardiopulmonary systems.
  - (c) Satisfactory proof of the requirements of subparagraphs (a) and (b) shall include:
    1. written job description(s) from employing facilities that cover the entire four (4) year period; and
    2. letters from each of the following officials at the licensed health care facilities at which the applicant was employed during the entire four (4) year period attesting to the fact that all requirements of subparagraphs (a) and (b) have been met:
      - (i) a cardiac surgeon(s)
      - (ii) the applicant’s immediate supervisor(s)
      - (iii) the chief of medical staff
  - (d) All documents required to satisfy the requirements of subparagraphs (a), (b) and (c) must be submitted directly from the employing facility or signatory to the Committee’s administrative office.
- (2) Licensure by examination – An applicant for licensure by examination shall do the following:
  - (a) Obtain an application packet.
  - (b) Respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
  - (c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.

- (d) Request that a graduate transcript from a perfusion education program, the educational standards of which have been established by the ACPE and approved by CAHEA or its successor, be submitted directly from the educational institution to the Administrative Office. The transcript must show that the program has been successfully completed and carry the official seal of the institution.
  - (e) Submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
  - (f) Disclose the circumstances surrounding any of the following:
    - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
    - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
    - 3. Loss or restriction of professional licensure/certification.
    - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
    - 5. Failure of any professional licensure or certification examination.
  - (g) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing board to the Administrative Office.
  - (h) Submit the fees required in Rule 0880-11-.06.
  - (i) Cause to be submitted, directly from the examining agency to the Administrative Office, documentation of successful completion of the examination for licensure as governed by Rule 0880-11-.08.
- (3) Licensure by Reciprocity. To become licensed in Tennessee as a clinical perfusionist based on licensure or certification in another state or certification from the ABCP, an applicant must
- (a) Pursuant to licensure/certification in another state:
    - 1. Comply with all the requirements of paragraph (2) of this rule except subparagraphs (d) and (i); and
    - 2. Cause to be submitted the information necessary for the Committee to determine that the state of licensure/certification has licensure or certification requirements substantially equivalent to the requirements of the Tennessee "Clinical Perfusionist Licensure Act (T.C.A. §§ 63-28-101, et seq.) and this chapter of rules; and

3. Cause the certification issued pursuant to subparagraph (2)(g) to show that the licensure or certification in another state is current, active and is in good standing without any restriction or encumbrance; and
  4. Pay the fee required by Rule 0880-11-.06.
- (b) Pursuant to ABCP certification:
1. Have the ABCP submit directly to the Committee’s administrative office satisfactory evidence of ABCP certification as a certified clinical perfusionist; and
  2. Pay the fee required by Rule 0880-11-.06.
- (4) Application review and licensure decisions shall be governed by Rule 0880-11-.07.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-28-103, 63-28-104, 63-28-105, 63-28-106, 63-28-109 and 63-28-118.

**0880-11-.06 FEES. ALL FEES PROVIDED FOR IN THIS RULE ARE NON-REFUNDABLE.**

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|--|----------|
| (1) Initial licensure fee to be submitted at the time of application.  | \$350.00 |
| (2) Biennial renewal fee to be submitted at the time of application and every two (2) years when licensure renewal is due. | \$350.00 |
| (3) Late renewal fee   | \$100.00 |
| (4) Licensure reinstatement/restoration fee  | \$ 50.00 |
| (5) Duplication of license fee   | \$ 25.00 |
| (6) Biennial state regulatory fee to be submitted at the time of application   | \$ 10.00 |
- (7) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Committee’s Administrative Office and made payable to the Committee for Clinical Perfusionists.
  - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-28-114 and 63-28-118.

**0880-11-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.**

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee’s administrator.

- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Committee or Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation conditioning or restricting of licensure.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Committee and/or Board member or the Committee's/Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the sixtieth (60th) day after receipt of the notification.
  - (a) Such notifications shall be sent certified mail, return receipt requested, from the Administrative Office.
  - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Committee and Board will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Committee Board.
- (4) If a reviewing Committee and/or Board member or Committee and/or Board designee initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Committee and the Board at their next appropriate meeting. If the Committee and Board ratify the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:
  - (a) A notification of the denial, limitation, condition or restriction shall be sent by the Administrative Office by certified mail, return receipt requested, that contains the specific reasons for denial, limitation, condition or restriction, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.
  - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial, limitation, condition or restriction and the procedure necessary to accomplish that action.
    1. An applicant has a right to a contested case hearing only if the licensure denial, limitation, condition or restriction is based on subjective or discretionary criteria.
    2. An applicant may be granted a contested case hearing if the licensure denial, limitation, condition or restriction is based on an objective, clearly defined criteria only if after review and attempted resolution by the Committee's Administrative Staff, the application can not be approved and the reasons for continued denial, limitation, condition or restriction present genuine issues of fact and/or law which are appropriate for appeal. Requests for a hearing must be made in writing to the Administrative Office within thirty (30) days of the receipt of the notice of denial, limitation, condition or restriction from the Committee and/or Board.



- (5) The initial determination procedures of this rule will not apply if the Committee reviews and makes final determination on any application during its meetings.
- (6) If the Committee finds it has erred in the issuance of a license, it will give written notice by certified mail of its intent to revoke or cancel the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke or cancel the license, the applicant shall have the right to proceed according to paragraph (4) of this rule.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-105, 63-28-114 and 63-28-118.

#### **0880-11-.08 EXAMINATION.**

- (1) Licensure Examinations - With the exception of applicants qualified pursuant to Rule 0880-11-.05 (1) and (3), all persons intending to apply for licensure must successfully complete the examination pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Administrative Office as part of the application process contained in Rule 0880-11-.05.
- (2) Competency Examination
  - (a) The Board adopts the ABCP examination and/or its successor examination as its licensure competency examination.
  - (b) The Board adopts the ABCP's determination as to the passing score on its examination.
  - (c) Application for, proof of having successfully completed a perfusion education program, the educational standards of which have been established by the ACPE and approved by CAHEA or its successor, and fees necessary to take the ABCP examination must be sent to the ABCP and not the Board.
- (3) Any applicant who does not successfully complete the competency examination on the second (2<sup>nd</sup>) attempt and every second (2<sup>nd</sup>) attempt thereafter must do the following prior to being authorized to take the examination again:
  - (a) Successfully complete a review course, as approved by the Committee; and
  - (b) Pay the examination fee required by the ABCP.
- (4) Education hours obtained as a result of compliance with subparagraph (3) (a) shall not be credited toward the continuing education hours required to be obtained in any renewal period pursuant to rule 0880-11-.12 (1).

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-105, 63-28-106, and 63-28-118.

**0880-11-.09 LICENSURE RENEWAL.** All licensed clinical perfusionists must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:

- (1) The due date for license renewal is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" as contained on the expiration date on the renewal certificate.

- (2) A renewal application form will be mailed to each individual licensed by the Committee to the last address provided to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.
- (3) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
  - (a) A completed and signed renewal application form.
  - (b) The renewal and state regulatory fees as provided in Rule 0880-11-.06.
  - (c) Satisfactory evidence of compliance with the continuing education requirements of rule 0880-11-.12.
- (4) Any renewal application received after the expiration of the Division's grace period must be accompanied by the Late Renewal Fee provided in Rule 0880-11-.06.
- (5) Any individual who fails to comply with the license renewal rules and/or notifications sent to them concerning failure to timely renew shall have their license processed for administrative revocation.
- (6) Any license holder who receives notice of administrative revocation may, within thirty (30) days of receipt of the notice pursuant to Rule 0880-11-.11, execute and file in the Administrative Office an affidavit of retirement which will effectively retire the license as of the 30th day after the renewal due date.
- (7) Renewal of Administratively Revoked License:
  - (a) Renewal of a license administratively revoked pursuant to this rule may be accomplished upon meeting the following conditions:
    - 1. For persons whose licenses have been administratively revoked for not more than two (2) years:
      - (i) Submission of a completed renewal application; and
      - (ii) Payment of late renewal fee; and
      - (iii) Submission of proof of the having completed all required continuing education.
    - 1. Persons whose licenses have been administratively revoked for two (2) years or more may not renew licensure but must apply for a new license pursuant to rule 0880-11-.05.
    - 2. For persons whose licenses have been administratively revoked and who have moved to, been licensed in, and have practiced in another state for the (2) years immediately preceding application for licensure renewal:
      - (i) Submission of a completed renewal application; and
      - (ii) Payment of late renewal fee; and
      - (iii) Submission of proof that the licenses held in all other states are not subject to penalty or restriction.

- (iii) Submission of proof of the having completed all required continuing education.
- 4. If derogatory information or communication is received during the renewal process, if requested by the Committee and/or Board or their duly authorized representative(s), appear before the Committee and/or Board, a duly constituted panel of the Board, a Committee and/or Board member, a screening panel of the Board when the individual is under investigation or the Committee and/or Board Designee for an interview and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (8) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Committee and Board or their designees.
- (9) As an alternative to the “paper and mail” renewal, licensees may utilize any electronic means made available by the Division for the purpose of renewal of licensure.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-107 and 63-28-118.

**0880-11-10 SUPERVISION.** All persons practicing clinical perfusion pursuant to authorizations from the Committee and Board must be supervised according to the following:

- (1) Licensed Clinical Perfusionists – Must be performing services under the order and supervision of a physician licensed pursuant to either Chapter 6 or Chapter 9 of Title 63 of the Tennessee Code Annotated. Supervision may be provided through “perfusion protocols” as defined in T.C.A. § 63-28-102. Such protocols must be in writing, signed by the health care facility’s authorized representative, and a physician, regularly updated, maintained at the health care facility, and produced upon request by the duly authorized agents of the Committee and/or Board.
- (2) Provisional Licensees – Must be under the supervision of a licensed clinical perfusionist at all times during which they are performing perfusion. This supervision does not require the immediate physical presence of the supervising perfusionist but does require the following:
  - (a) Supervision may be provided through “perfusion protocols” as defined in T.C.A. § 63-28-102. Such protocols must be in writing, signed by the health care facility’s authorized representative, a physician, and the supervising clinical perfusionist, regularly updated, maintained at the health care facility, and produced upon request by the duly authorized agents of the Committee and/or Board.
  - (b) Protocols shall be reviewed and updated biennially.
  - (c) The supervising perfusionist shall exercise close supervision and assume full control and responsibility for the services provided by the provisional licensee. That supervision, control and responsibility does not require the physical presence of the supervising perfusionist at all times where the services are being provided. However, it does require that the supervising perfusionist be capable of being physically present where the services are being provided within thirty (30) minutes.
  - (d) The supervising clinical perfusionist may not sign a provisional licensure renewal application request for a provisional licensee unless the provisional licensee has taken the certification examination identified in rule 0880-11-.08 at least once during the current provisional licensure period.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-102, 63-28-108, and 63-28-118.

**0880-11-11 RETIREMENT AND REACTIVATION OF LICENSE.**

- (1) Licensees who wish to retain their licenses but not actively practice as a clinical perfusionist may avoid administrative revocation of licensure and/or compliance with the licensure renewal process by obtaining, completing, and submitting, to the Administrative Office, an affidavit of retirement form along with any documentation required by the form.
- (2) Upon successful application for retirement of licensure with completion and receipt of all proper documentation to the Committee's and Board's satisfaction, the license shall be registered as retired. Any person who has a retired license may not practice as a clinical perfusionist in Tennessee.
- (3) Reactivation - Any licensee whose license has been retired may re-enter active practice by doing the following:
  - (a) Submit a written request for a Reactivation Application to the Board Administrative Office; and
  - (b) Complete and submit the Reactivation Application along with the licensure renewal fee as provided in Rule 0880-11-.06 to the Administrative Office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the licensure restoration fee and past due renewal fees as provided in Rule 0880-11-.06; and
  - (c) Submit any documentation which may be required by the form to the Board Administrative Office; and
  - (d) If requested, after review by the Committee and/or Board or a designated Committee and/or Board member, appear before either the Committee and/or Board, or a duly constituted panel of the Board, or another Committee or Board member, or the Committee and/or Board Designee for an interview regarding continued competence
  - (e) In the event of licensure retirement or inactivity in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process the applicant should be prepared to meet or accept other conditions or restrictions as the Committee and/or Board may deem necessary to protect the public.
  - (f) If licensure retirement was in excess of five (5) years, the licensee may be required to successfully complete whatever educational and/or testing requirements the Committee and/or Board feels necessary to establish current levels of competency.
- (4) License reactivation applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-11-.07.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-6-101, and 63-28-118.

**0880-11-.12 CONTINUING EDUCATION.** All persons licensed as a clinical perfusionist must comply with the following continuing education rules as a prerequisite to licensure renewal.

- (1) Continuing Education - Hours Required
  - (a) All licensed clinical perfusionists must complete fifteen (15) hours of continuing education in courses approved by the Committee and Board every calendar year (January 1-December 31).

- (b) Three (3) hours of the fifteen (15) hour requirement must be ABCP Category I courses.
  - (c) Continuing education for new licensees - For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to Rule 0880-11-.05, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.
  - (d) The Committee and Board approve a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
  - (e) The Committee and/or Board may waive or otherwise modify the requirements of this rule in cases where there is retirement, or an illness, disability or other undue hardship that prevents a licensee from obtaining the requisite number of continuing education hours. Requests for waivers or modification must be sent in writing to the Administrative Office prior to the expiration of the renewal period in which the continuing education is due.
- (2) Continuing Education - Proof of Compliance
- (a) The due date for completion of the required continuing education is December 31<sup>st</sup> of every calendar year.
  - (b) All clinical perfusionists must, on the license renewal form, enter a signature, electronic or otherwise, which indicates completion of the required continuing education hours and that such hours were obtained during the applicable calendar years.
  - (c) All clinical perfusionists must retain independent documentation of completion of all continuing education hours. This documentation must be retained for a period of four (4) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Documentation verifying the licensed individual's completion of the continuing education program(s) may consist of any one or more of the following:
    - 1. Certificates from the continuing education program's sponsor, indicating the date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number; or
    - 2. An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
  - (d) If a person submits documentation for continuing education that is not clearly identifiable as appropriate continuing education, the Committee and/or Board will request a written description of the education and how it applies to the practice as a clinical perfusionists.
- (3) Acceptable continuing education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by either the ABCP, the AMA or the TMA or other any AMA recognized medical specialty certification organization. If the continuing education is not approved or sponsored by the ABCP, the content and structure must be as strict as the standards utilized by the ABCP in approving or sponsoring continuing education.

## (4) Violations

- (a) Any clinical perfusionist who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-11-.15.
- (b) Any clinical perfusionist who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-11-.15 and may not be allowed to renew licensure.
- (c) Education hours obtained as a result of compliance with the terms of Committee and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-107, 63-28-114, and 63-28-118.

**0880-11-.13 PROFESSIONAL ETHICS.** All clinical perfusionists shall comply with the code of ethics adopted by the AmSECT except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Committee and/or Board. If the AmSECT Code of Ethics conflicts with state law or rules, the state law or rules govern the matter. Violation of the Code of Ethics or state law or rules may subject a licensee to disciplinary action pursuant to Rule 0880-11-.15.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-114, and 63-28-118.

**0880-11-.14 PROVISIONAL LICENSES.**

- (1) A provisional license may be issued to an applicant who has applied for but has yet to take the licensure examination upon compliance with all provisions of rule 0880-11-.05 (2) except subparagraph (i) and submission of proof of having applied to take the examination.
- (2) Provisional licenses are valid for a period of one (1) year from the date of issuance but may be renewed in accordance with rule 0880-11-.09 upon receipt of a renewal form signed by both the applicant and the supervising clinical perfusionist.
- (3) A provisional license becomes invalid and must be surrendered upon either of the following:
  - (a) The one (1) year licensure period has occurred and the licensee fails to renew or fails to obtain the supervising clinical perfusionists' signature on the renewal form; or
  - (b) The licensee fails any portion of the licensure examination.
- (4) Supervision of provisional licensees is governed by rule 0880-11-.10.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-108, 63-28-114, and 63-28-118.

**0880-11-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.**

- (1) Grounds and Authority For Disciplinary Actions - The Committee and Board shall have the power to deny, limit, restrict or condition an application for a license to any applicant who applies for the same. The Committee and Board shall have the authority to suspend or revoke, place on probation, reprimand or otherwise discipline any person holding a license to practice as a clinical perfusionist. The grounds upon which the Committee and Board shall exercise such powers includes, but is not limited to, the following:
  - (a) Unprofessional conduct as set forth in T.C.A. § 63-28-117;
  - (b) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as a clinical perfusionist;
  - (c) The advertising of a clinical perfusionists' business in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment, or conditions;
  - (d) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;
  - (e) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly for referrals of business or patients;
  - (f) Engaging in the practice of clinical perfusion when mentally or physically unable to safely do so;
  - (g) Violation of the continuing education provisions of Rule 0880-11-.12;
  - (h) Violation of the scope of practice statutes T.C.A. § 63-24-101;
  - (i) Disciplinary action against a person licensed, certified, registered, or permitted to practice as a clinical perfusionist by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state.
- (2) Upon a finding by the Committee and Board that a licensee has violated any provision of the T.C.A. §§ 63-28-101, et seq., or the rules promulgated pursuant thereto, the Committee and Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense:
  - (a) Warning Letter - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
  - (b) Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
  - (c) Probation - This is a formal disciplinary action which places a clinical perfusionist on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
  - (d) License Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.

(e) License Revocation

1. Administrative Revocation - An administrative action taken pursuant to rule 0880-11-.09 when a license holder fails to timely renew licensure and all other available options have been ignored. Licenses administratively revoked may be reinstated upon meeting the conditions stated in Rule 0880-11-.09.
  2. Revocation For Cause - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. The Committee and/or Board, in their discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which they deem appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
- (f) Conditions - Any action deemed appropriate by the Committee and/or Board to be required of a disciplined license holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked license.
- (g) Civil Penalty - A monetary disciplinary action assessed by the Committee and/or Board pursuant to the procedures and schedules contained in paragraph (3).

(3) Civil Penalties

- (a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
- (b) Schedule of Civil Penalties.
1. A "Type A" Civil Penalty may be imposed whenever the Committee finds a person who is required to be licensed, certified, permitted, or authorized by the Committee, guilty of a willful and knowing violation of the Clinical Perfusionists Licensure Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing as a clinical perfusionists without a permit, license, certificate, or other authorization from the Committee is one of the violations of the Clinical perfusionists Act for which a "Type A" Civil Penalty is assessable.
  2. A "Type B" Civil Penalty may be imposed whenever the Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Clinical Perfusionists Licensure Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.
  3. A "Type C" Civil Penalty may be imposed whenever the Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Clinical Perfusionists Licensure Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.
- (c) Amount of Civil Penalties.
1. "Type A" Civil Penalties shall be assessed in the amount of not less than \$500 nor more than \$1000.



2. “Type B” Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
  3. “Type C” Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.
- (d) Procedures for Assessing Civil Penalties.
1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
  2. Civil Penalties may also be initiated and assessed by the Committee during consideration of any Notice of Charges. In addition, the Committee may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
  3. In assessing the civil penalties pursuant to these rules the Committee may consider the following factors:
    - (i) Whether the amount imposed will be substantial economic deterrent to the violator;
    - (ii) The circumstances leading to the violation;
    - (iii) The severity of the violation and the risk of harm to the public;
    - (iv) The economic benefits gained by the violator as a result of non-compliance; and
    - (v) The interest of the public.
  4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, T.C.A.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-134, 63-6-101, 63-6-209, 63-6-214, 63-28-114, 63-28-117 and 63-28-118.

**0880-11-.16 REPLACEMENT LICENSE** - A license holder whose “artistically designed” license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 0880-11-.06.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-6-101, 63-28-114, and 63-28-118.

**0880-11-.17 CHANGE OF NAME AND/OR ADDRESS.**

- (1) Change of Name – Any licensee shall notify the Board in writing within 30 days of a name change and will provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual’s profession, committee/board, social security, and license numbers.

- (2) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Administrative Office his/her current address providing both the old and new addresses. Such requests must be received in the Administrative Office no later than 30 days after such change is effective and must reference the individual's name, profession, social security number, and license number.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-108, 63-6-101, 63-28-114 and 63-28-118.

#### **0880-11-.18 COMPLAINTS AND INVESTIGATIONS.**

- (1) The Committee finds that the Division's Complaint and Investigations procedures full comply with the requirements of T.C.A. §§ 63-28-115 and 116 and adopts those procedures as its own. Copies of those procedures may be obtained by a written request addressed to the Administrative Office.
- (2) The only circumstance in which the Committee would consider employing private investigators would be if a conflict of interest existed between the person being investigated and the Division's investigative staff, and then only if all other resources of that nature within state government were exhausted without effect. If that should ever occur, the process for employing a private investigator would be the competitive bid process used by the State of Tennessee in employing all outside vendors.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-115, 63-28-116, and 63-28-118.

#### **0880-11-.19 COMMITTEE OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS**

- (1) The Committee shall annually elect from its members the following officers:
  - (a) Chair - who shall preside at all meetings of the Committee; and
  - (b) Vice Chair - who along with the Committee Administrator shall be responsible for correspondence from the Committee.
- (2) The Committee has the authority to select a Committee consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
  - (a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
  - (b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the Committee and Board before it becomes effective.
  - (c) Undertake any other matter authorized by a majority vote of the Committee and/or Board.
- (3) Records and Complaints
  - (a) Minutes of the Committee meetings and all records, documents, applications and correspondence will be maintained in the Administrative Offices.

- (b) All requests, applications, notices, other communications and correspondence shall be directed to the Administrative Office. Any requests or inquiries requiring a Committee decision or official Committee action except documents relating to disciplinary actions, or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Committee at the Committee meeting. Such documents not timely received shall be set over to the next Committee meeting.
  - (c) All records of the Committee, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
  - (d) Copies of public records shall be provided to any person upon payment of a fee.
  - (e) All complaints should be directed to the Division's Investigations Section.
- (4) The Committee members or the Consultant are individually vested with the authority to do the following acts:
- (a) Review and make determination on licensure, renewal and reactivation of licensure applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Committee and Board.
  - (b) Serve as Consultant to the Division to decide the following:
    - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
    - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Committee and Board.
- (5) The Committee shall designate one (1) of its members or the Consultant to make determinations pursuant to Rule 1360-4-1-.18.
- (6) Requests for Verification of Licensure for Clinical Perfusionists desiring to practice in another state must be made in writing to the Administrative Office.
- (7) Declaratory Orders - The Committee adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Committee shall be addressed by the Committee pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Committee's administrative office.

**Authority:** T.C.A. §§ 4-5-202, 4-5-105, 4-5-223, 4-5-224, 63-1-115, 63-1-117, 63-6-101, 63-28-113, 63-28-114, 63-28-115, 63-28-116, and 63-28-118.

**0880-11-.20 ADVERTISING.** Fraudulent, misleading, or deceptive advertising is prohibited.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-117, and 63-28-118.

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of April, 2001. (04-11)

## **BOARD OF REGISTRATION IN PODIATRY - 1155**

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of an amendment to a rule, new rules, and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-3-106 and 63-3-125. 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. (CDT) on the 18<sup>th</sup> day of June, 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**

#### **AMENDMENT**

Rule 1155-2-.12, Continuing Education, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (6) (c) in its entirety, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Basic requirements - The Board of Registration in Podiatry requires each licensee registered with the Board to complete fifteen (15) clock hours of continuing education for each calendar year.
  - (a) Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care.
  - (b) Ten (10) hours of the fifteen (15) clock hour requirement must be completed in the traditional "lecture / classroom" format.
  - (c) Five (5) hours of the fifteen (15) clock hour requirement may be completed in any of the following multi-media formats:
    1. The Internet
    2. Closed circuit television
    3. Satellite broadcasts
    4. Correspondence courses
    5. Videotapes

- 6. CD-ROM
  - 7. DVD
  - 8. Teleconferencing
  - 9. Videoconferencing
  - 10. Distance learning
- (2) Acceptable continuing education shall consist of courses provided or sponsored by the APMA, APMA approved colleges of podiatric medicine, state, regional (zone), national and affiliated specialty groups, the U.S. federal government, or other education programs approved by the Board.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-116.

**NEW RULES**

**CHAPTER 1155-3  
GENERAL RULES GOVERNING PODIATRY X-RAY OPERATORS**

**TABLE OF CONTENTS**

1155-3-.01	Scope of Practice and Certification	1155-3-.06	Fees
1155-3-.02	Education and Training Requirements	1155-3-.07	Retirement and Reactivation
1155-3-.03	Reciprocity	1155-3-.08	Disciplinary Action
		1155-3-.09	Change of Address and/or Name
1155-3-.04	Continuing Education		
1155-3-.05	Renewal		

**1155-3-.01 SCOPE OF PRACTICE AND CERTIFICATION.**

- (1) Scope of Practice - Any person who applies x-rays to human beings for diagnostic purposes in a podiatrist’s office in Tennessee must be certified by the Board of Registration in Podiatry.
  - (a) Only those individuals that are qualified by training and experience may obtain a certificate to practice as x-ray operators in a podiatrist’s office and must do so under the supervision of a duly licensed podiatrist.
  - (b) Each person certified by the Board must practice only in the “foot/ankle” specialty area. Practicing radiography beyond the scope of certification is grounds for decertification.
  - (c) Board issued certificates shall be posted in a location visible to all patients receiving radiographic examinations.
  - (d) Certificates issued by the Board are subject to being disciplined for the same causes, to the same extent and pursuant to the same procedures as issued podiatry licenses.
  - (e) Under no circumstances may a person certified pursuant to this chapter perform any procedure utilizing contrast media or any invasive radiological procedure.

- (2) Certification - Individuals desiring certification must submit a notarized application on a form prescribed by the Board. This application must have a recent photograph properly attached and must be accompanied by a non-refundable fee as provided in Rule 1155-3-.06.
  - (a) The applicant must be at least eighteen (18) years of age; and
  - (b) The applicant must possess a high school diploma or its equivalent and comply with either Rule 1155-3-.02 or 1155-3-.03; and
  - (c) The applicant must be free from physical and mental impairment that interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of patients.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-125.*

#### **1155-3-.02 EDUCATION AND TRAINING REQUIREMENTS.**

- (1) The applicant shall cause to be submitted to the Board's administrative office official verification of attendance and successful completion of four (4) contact hours of didactic instruction in the field of x-ray operation.
  - (a) The instruction shall include, but not be limited to, radiographic imaging equipment, principles of radiographic exposure, radiation safety and protection, patient care and positioning, radiographic quality, radiographic film processing, radiographic image protection, and quality control methods.
  - (b) The four (4) contact hours of didactic instruction may be obtained from a licensed podiatrist under whom the x-ray operator is training or by attending a Board-approved course on x-ray operation. Requests for approval of coursework must be received in the Board's administrative office at least forty-five (45) days prior to commencement of the course.
  - (c) Verification of successful completion of the requirements of this paragraph must be sent directly to the Board by the licensed podiatrist under whom the x-ray operator is training or by the Board-approved course provider.
- (2) The applicant shall cause to be submitted to the Board's administrative office official verification of successful completion of at least fifty (50) hours of supervised clinical experience.
  - (a) The supervised clinical experience shall include, but not be limited to, training in radiographic methodology, technique, patient care and positioning, equipment maintenance, radiation protection and x-ray quality control.
  - (b) The x-ray operator, while attaining the supervised clinical experience, may take x-rays only in the presence of the supervising licensed podiatrist or a certified podiatric x-ray operator.
  - (c) Verification of successful completion of the requirements of this paragraph must be sent directly to the Board by the supervising licensed podiatrist on a form provided by the Board.
- (3) Application review, approval, denial, and interview decisions shall be governed by Rule 1155-2-.07.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.*

**1155-3-.03 RECIPROCITY.**

- (1) An applicant requesting certification by reciprocity must be duly licensed or certified in another state, provided that state's requirements substantially meet or exceed Tennessee's requirements and further provided the applicant's license or certification is current and in good standing. To receive such certification an applicant must:
  - (a) submit a completed and notarized application form as supplied by the Board, a recent photograph and the non-refundable application fee as specified in 1155-3-.06.
  - (b) cause to be submitted directly to the Board Administrative Office official verification of current licensure/certification from the other state; and
  - (c) submit a copy of the law and rules governing x-ray operators from each state in which the applicant holds licensure/certification.
- (2) Application review, approval, denial, and interview decisions shall be governed by Rule 1155-2-.07.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.04 CONTINUING EDUCATION.**

- (1) Each person certified by the Board must biennially complete two (2) hours of radiological related continuing education in courses approved by the Board.
- (2) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the biennial time period in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. The Board will not maintain continuing education files.
- (3) The individual must, within thirty (30) days of a request from the Board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.
- (4) The individual is exempt from the continuing education requirements for the calendar year that he/she completed the education and training requirements pursuant to Rule 1155-3-.02.
- (5) Violations
  - (a) Any person who falsely attests to attendance and completion of the required hours of continuing education may be subject to decertification.
  - (b) Any person who fails to obtain the required continuing education hours may be subject to decertification.
  - (c) Education hours obtained as a result of compliance with the terms of a Board order in any disciplinary action shall not be counted toward the continuing education hours required to be obtained by paragraph (1) of this rule.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.05 RENEWAL.**

- (1) X-ray operator certificates must be renewed biennially. Application for renewal on a form prescribed by the Board and a non-refundable renewal fee as provided in Rule 1155-3-.06 must be received no later than the expiration date shown on the last renewal certification.
- (2) Failure to timely renew will result in the processing of the x-ray certificate for administrative revocation.
- (3) If a x-ray operator certificate is administratively revoked for failure to renew it may be reinstated by submitting a written request to the Board. Upon good cause being shown the Board may approve such reinstatement only upon payment of all back renewal fees plus a late renewal fee as specified in Rule 1155-3-.06.
- (4) Application review, approval, denial, and interview decisions shall be governed by Rule 1155-2-.07.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.06 FEES.****AMOUNTS**

(1) Application	\$50.00
(2) Renewal (biennial)	\$30.00
(3) Late Renewal	\$20.00
(4) State Regulatory (biennial)	\$10.00

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.07 RETIREMENT AND REACTIVATION.**

- (1) A person who holds a current certificate and does not intend to practice as a certified podiatric x-ray operator may apply to convert an active certificate to inactive (“retired”) status. An individual who holds a retired certificate will not be required to pay the renewal fee.
- (2) A person who holds an active certificate may apply for retired status in the following manner:
  - (a) Obtain, complete, and submit to the Board’s administrative office an affidavit of retirement form.
  - (b) Submit any documentation which may be required to the Board’s administrative office.
- (3) A podiatric x-ray operator whose certificate has been retired may re-enter active status by doing the following:
  - (a) Obtain complete and submit to the Board’s administrative office a reactivation/reinstatement application.
  - (b) Pay the renewal fees and state regulatory fees as provided in Rule 1155-3-.06. If retirement reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will require payment of the late renewal fee and past due renewal fees.



- (c) Submit verification of successful completion of continuing education hours for the period of retirement, pursuant to Rule 1155-3-.04.
- (4) Certificate reactivation applications shall be treated as certificate applications, and review decisions shall be governed by Rule 1155-2-.07.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.08 DISCIPLINARY ACTION.** Any violation of this chapter could result in disciplinary action against the x-ray operator and the supervising podiatrist, pursuant to Rule 1155-2-.15.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**1155-3-.09 CHANGE OF ADDRESS AND/OR NAME.**

- (1) Change of Name - An individual registered with the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession and certificate number.
- (2) Change of Address - Each person holding a certificate who has had a change of address or place of employment shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and certificate number.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

**REPEALS**

1155-3-.01, X-Ray Operators, is repealed.  
1155-3-.02, Fees, is repealed.  
1155-3-.03, Education and Training, is repealed.  
1155-3-.04, Examinations for Certification, is repealed.  
1155-3-.05, Grandfather, is repealed.  
1155-3-.06, Reciprocity, is repealed.  
1155-3-.07, Renewal, is repealed.  
1155-3-.08, Continuing Education, is repealed.  
1155-3-.09, Disciplinary Action, is repealed.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125.

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of April, 2001. (04-08)

**BOARD OF VETERINARY MEDICAL EXAMINERS - 1730**  
**DIVISION OF HEALTH RELATED BOARDS**

There will be a hearing before the Tennessee Board of Veterinary Medical Examiners to consider the promulgation of an amendment to a rule and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-12-106. 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. (CDT) on the 8<sup>th</sup> day of August, 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**

**AMENDMENT**

Rule 1730-2-.09, Laboratory Services, is amended by deleting part (1) (c) 5. in its entirety and substituting instead the following language, so that as amended, the new part (1) (c) 5. shall read:

- (1) (c) 5. Exams for diagnosing heartworm disease.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-12-103, and 63-12-106.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of April, 2001. (04-14)



### CERTIFICATE OF APPROVAL

*As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning April 2, 2001 and ending April 30, 2001.*



RILEY C. DARNELL  
*Secretary of State*

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