

TAAAR



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RILEY C. DARNELL
Secretary of State

Division of Publications
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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.

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

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

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

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ANNOUNCEMENTS

OFFICE OF THE TENNESSEE STATE ATTORNEY GENERAL'S OFFICE

ATTORNEY GENERAL'S GUIDELINES FOR EVALUATION OF PROPOSED REGULATORY OR ADMINISTRATIVE ACTIONS TO AVOID UNCONSTITUTIONAL TAKINGS OF PRIVATE PROPERTY

I PURPOSE

These guidelines are submitted by the Office of the Attorney General pursuant to Chapter 924 of the Public Acts of 1994 (codified at T.C.A. § 12-1-201, *et seq.*). Section 4 of the Act requires the Attorney General to develop guidelines to assist state agencies in the identification and evaluation of government actions that may result in an unconstitutional taking of private property, in order to avoid an unnecessary burden on the public treasury and unwarranted interference with private property rights. The guidelines establish a basic framework for agencies to use in their internal evaluations of the takings implications of administrative and regulatory policies and actions. The guidelines do not prevent an agency from making an independent decision about proceeding with a specific policy or action which the decisionmaker determines is authorized by law.

These guidelines are intended solely as internal and predecisional management aids for agency decisionmakers and should not be construed as an opinion by the Attorney General on whether a specific action constitutes a taking. A private party shall not be deemed to have a cause of action against an agency for failure to follow any suggested procedures contained in the guidelines.

II SCOPE

An agency should evaluate, for their takings implications, its administrative and regulatory policies and actions that affect, or may affect, the use or value of private real property in accordance with the framework established in these guidelines, including, but not limited to, regulations that propose or implement licensing, permitting or certification requirements, conditions or restrictions otherwise imposed by an agency on private property use, and any actions relating to or causing the physical occupancy or invasion of private property. These guidelines are limited to examination of takings of private real property and are not intended to govern or affect issues such as validity of searches or investigative or discovery demands which are controlled by other statutory and constitutional law.

The following policies and actions are excluded from evaluation under these guidelines:

1. The exercise of the power of eminent domain;
2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;
3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and

4. The discontinuation of government programs.

Examples of agency actions that would be excluded under these guidelines include, but are not limited to, tax enforcement and collection activities pursuant to T.C.A. § 67-1-1401, et seq, or other authority.

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. Article 1, Section 21 of the Tennessee Constitution provides that “[n]o man’s particular services shall be demanded, or property taken, or applied to public use, . . . without just compensation. . . .” The government may not, therefore, take property except for public purposes within its constitutional authority and only upon payment of just compensation.

The State has historically used its power of eminent domain under T.C.A. § 29-16-101, *et seq.* to acquire private property for a public purpose, such as a highway or recreation area, and in so doing has compensated property owners through a formal condemnation proceeding. The government, however, may also become liable for payment of just compensation to private property owners without the initiation of formal proceedings, when private property has either been physically occupied or invaded by the government on a permanent or temporary basis, or so affected by governmental regulation as to have been effectively taken despite the fact the government has neither physically invaded, confiscated nor occupied the property. In contrast to the formal exercise of eminent domain, the private property owner can obtain compensation by filing an “inverse condemnation” suit.

B. Nature of a Taking

A taking of private property rights may occur when permanent or temporary government actions result in the physical occupancy of property, the physical invasion of property, either directly or indirectly (see discussion in B. 2. below), or the regulation of property.

1. Physical Occupancy

As a general rule, a physical occupation of property by the government which is permanent is a taking, regardless of how slight the occupancy, the minimal economic impact on the property owner or whether the government action achieves an important public benefit. Aside from formal condemnation exercises, examples of physical occupancy takings include permanent utility easements and access easements. In some circumstances, however, even a temporary access easement may be deemed to be a physical taking. See discussion in B. 2. below.

2. Physical Invasion

The concept of permanent physical occupation does not necessarily require that in every instance the occupation be exclusive or continuous and uninterrupted. Physical invasions of property may also give rise to a taking where the invasions are of a recurring and substantial nature, or of finite duration, and thereby amount to temporary takings. Examples of physical invasion takings may include, among others, flooding and water related intrusions resulting from government projects, access easements, and aviation easement intrusions. The last example is not necessarily limited to direct overflights, but may result where there is continuous interference, through noise, pollution or vibration, with the beneficial use and enjoyment of property.

3. Regulatory Takings

Land use regulations that affect the value, use, or transfer of private property may constitute a taking if the regulations are adjudged to go too far. The greater the deprivation of use, the greater the likelihood that a taking will be found.

While there is no set formula for determining when government action constitutes a taking, an agency should consider the following criteria:

- a. Whether the policy or action will substantially advance a legitimate public purpose of the enabling statute, where the policy or action is in furtherance of obligations imposed or authorized by statute. If the regulation fails to substantially advance a legitimate state interest, goes beyond the government's powers under common law nuisance doctrine, or no nexus exists between the asserted government purpose and the regulation, a taking may be found.
- b. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment-backed expectations. In this regard, the timing of the regulatory enactment with respect to the landowner's acquisition of title may be relevant, but not necessarily dispositive.
- c. If the regulation advances a legitimate public purpose, but is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property-related activity to the harm to be addressed, the greater the risk that a taking will be found.
- d. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. Special Situations and Suggested Procedures

When implementing a regulatory policy or action and evaluating the takings implications of that policy or action, agencies should consider the following special factors and suggested procedures:

1. Permitting and Certification Programs

The programs of many agencies require private parties to obtain permits or certification before making specific uses of, or acting with respect to, private property. An agency may place conditions on the granting of such permits or certification, or deny the same, without necessarily effecting a taking for which compensation is due, however, the agency should first consider the following factors in determining whether a taking may result:

- a. Whether the government action will deprive the owner of essentially all economically viable or productive use of his property (see discussion below in C. 2. regarding economic impact of regulation); and

- b. The degree to which the state imposed restriction interferes with the owner's reasonable investment-backed expectations; and
- c. Whether the condition imposed by the government will result in a permanent physical occupation or invasion of the property, such as an access easement; and
- d. Whether a condition that requires a dedication of property to public use is reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Where public health and safety is the asserted regulatory purpose, then the health and safety risk posed by the property use must be identified with as much specificity as possible and should be real and substantial, and not merely speculative.

2. Assessing Economic Impact of the Regulation as Applied

In assessing whether a proposed policy or action may effect a taking of private property, an agency may want to consider the economic impact of a regulation by examining the following factors:

- a. The character and present use of the property, as well as the character and anticipated duration of the proposed or intended government action; and
- b. The likely degree of economic impact on all identified property and economic interests. A mere diminution in the value of the property to be regulated by the government's denial of the highest and best use of the property will not generally, by itself, amount to a taking (but see discussion below in C. 3. regarding the "parcel as a whole"); and
- c. Whether the proposed policy or action carries benefits to the private property owner that offset or otherwise mitigate the adverse economic impact of the proposed policy or action; and
- d. Whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

Paul G. Summers
Attorney General & Reporter

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

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 10.75 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 September 2001 is 9.55 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 5.55 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 July 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	EFFECT DATE
07-01	July 3, 2001	1240 Human Services Family Assistance Division	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson, Assistant General Counsel TN Tower, 26th Fl 312 8 th Ave, N Nashville, TN 37243 (615) 741-9534	July 3, 2001 through Dec 16, 2001
07-03	July 6, 2001	0620 Finance and Administration Bureau Of Medical Care Services Division Of Medicaid	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-1</i> <i>General Rules</i> 1200-13-1-.25 Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled.	George Woods Bureau of TennCare 729 Church St. Nashville TN 37247-6501 615-741-0145	Sept 19, 2001
07-04	July 6, 2001	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-12</i> 1200-13-12-.01 Definitions 1200-13-12-.02 Eligibility 1200-13-12-.03 Enrollment, Disenrollment, Re-enrollment 1200-13-12-.06 Managed Care Organizations 1200-13-12-.07 Managed Care Organization Payment 1200-13-12-.09 Third Party Resources	George Woods Bureau of TennCare 729 Church St. Nashville TN 37247-6501 615-741-0145	Sept 19, 2001
07-05	July 9, 2001	1220 Public Service Commission Division Of Public Utilities	Rulemaking Hearing Rules	Repeal and new chapter	<i>Chapter 1220-4-2</i> <i>Regulations For Telephone Companies</i> 1220-4-2-.55 Regulatory Reform	Richard Collier TRA 460 James Robertson Pkwy Nashville TN 37343 615-741-2904	Sept 26, 2001
07-06	July 9, 2001	1200 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	New Rule	<i>Chapter 1200-3-27</i> 1200-3-27-.04 Standards For Cement Kilns Nitrogen Oxides	Mr. John D. Patton Division of Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615)532-0604	Sept 22, 2001
07-07	July 9, 2001	1200 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	New Rule	<i>Chapter 1200-3-27</i> 1200-3-27-.06 NOX Budget Trading Program for State Implementation Plans	Mr. John D. Patton Division of Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615)532-0604	Sept 22, 2001

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECT DATE
07-08	July 9, 2001	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Repeal	<i>Chapter 1200-3-4 Open Burning</i> 1200-3-4-.03 Open Burning Prohibited	Mr. John D. Patton Division of Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615)532-0604	Sept 22, 2001
07-10	July 13, 2001	1200 Health Division Of Preventive Health Services	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200—14—1 Communicable Diseases</i> 1200-14-1-.29 Immunization Against Certain Chest Diseases Prior to Entry into Schools in TN	Jerrold Daniels 3rd Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37247 615-741-3111	Sept 23, 2001
07-11	July 18, 2001	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-3-29 Light-Duty Motor Vehicle Inspection and Maintenance</i> 1200-3-29-.02 Definitions 1200-3-29-.03 Motor Vehicle Inspection Requirements 1200-3-29-.10 Motor Vehicle Inspection Fee	Mrs. Vicki Lowe Division of Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615)532-6811	Oct 1, 2001
07-12	July 18, 2001	0400 Environment and Conservation Division of Water Pollution Control	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-4-12 Rules of the Water Quality Control Board</i> 1200-4-12-.01 Silvicultural Activity Stop Work Orders – General 1200-4-12-.02 Silvicultural Activity Stop Work Orders – Procedures 1200-4-12-.03 Notification by Operators with a Finding of Violation 1200-4-12-.04 Penalties 1200-4-12-.05 Meetings, Appeals, and Hearings	Alan Lierson OGC TN Twr 312 8th Ave N Nashville TN 37243-1548 532-0708	Oct 1, 2001
07-13	July 19, 2001	1660 Wildlife Resources	Rulemaking Hearing Rules	Repeal Amendment Repeal Amendment Repeal	<i>Chapter 1660-1-2 Rules and Regulations for Birds</i> 1660-1-2-.01 Artificially Propagated Game Birds 1660-1-2-.02 Migratory Bird Hunting <i>Chapter 1660-1-4 Rules and Regulations For Dogs</i> 1660-1-4-.01 Raccoon Dogs Field Trials 1660-1-4-.02 Other Trials 1660-1-4-.03 Control on Wildlife Areas 1660-1-8-.03 Fees For Hunting – Wildlife Management Areas 1660-1-8-.04 Hunting and Miscellaneous	Sheryl Holtam, Staff Attorney TN Wildlife Resources Agency P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Oct 2, 2001

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECT DATE
07-13, cont.				Amendment Repeal Amendment Amendments	<p>Uses of Wildlife Management Wildlife Resources Agency Controlled Lands</p> <p>1660-1-8-.05 Permit Applications and Drawings</p> <p>1660-1-8-.06 Hunting and Miscellaneous Uses of Public Hunting Areas</p> <p><i>Chapter 1660-1-11 Rules & Regulations Governing Shooting</i></p> <p>1660-1-11-.02 Operation of Private Wildlife Shooting Preserves</p> <p><i>Chapter 1660-1-14 Rules and Regulations for Refuges and Wildlife Management Areas</i></p> <p>1660-1-14-.01 through 1660-1-14-.02 Repealed</p> <p>1660-1-14-.03 Catoosa, Cheatham, Chuck Swan, Forks Of The River, Laurel Hill, Pea Ridge, And Prentice Cooper Wildlife Management Areas</p> <p>1660-1-14-.04 through 1660-1-14-.09 Repealed</p> <p>1660-1-14-.10 State Operated Wildlife And/Or Waterfowl Refuges.</p> <p>1660-1-14-.11 Tellico Lake Wildlife Management Area And Refuge</p> <p>1660-1-14-.12 Cheatham Lake Wildlife Management Area</p> <p>1660-1-14-.13 Hunting And Miscellaneous Uses Of Wildlife Management Areas And Other TN Wildlife Resources Agency Controlled Lands.</p> <p>1660-1-14-.14 Hunting And Miscellaneous Uses Of Public Hunting Areas</p>		
07-14	July 19, 2001	1240 Human Services Adult and Family Services Division	Public Necessity Rules	Amendments	<p><i>Chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children</i></p> <p>1240-4-6-.02 Definitions</p> <p>1240-4-6-.07 Staff</p>	William B. Russell Citizens Plaza Bldg, 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	July 19, 2001 through Dec 31, 2001
07-15	July 19, 2001	1240 Human Services Adult and Family Services Division	Public Necessity Rules	Amendments	<p><i>Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children</i></p> <p>1240-4-3-.02 Definitions</p>	William B. Russell Citizens Plaza Bldg, 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	July 19, 2001 through Dec 31, 2001

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECT DATE
07-17	July 19, 2001	1200 Health Board of Alcohol and Drug Abuse Counselors	Rulemaking Hearing Rules	New Rule	<i>Chapter 1200-30-1</i> <i>Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-30-1-.19 Professional Peer Assistance	John Fitzgerald, Special Counsel, Office of General Counsel, 26th Fl, William R. Snodgrass TN Tower, 312 Eighth Ave N, Nashville, TN 37243 615-741-1611	Oct 3, 2001
07-19	July 20, 2001	1240 Human Services TN Business Enterprises	Proposed Rules	Amendments	<i>Chapter 1240-6-4</i> <i>Training Program</i> 1240-6-4-.01 Entry Level Training	William B. Russell, General Counsel Citizens Plaza Bldg, 15 th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Nov 28, 2001
07-20	July 30, 2001	1540 Higher Education Commission	Proposed Rules	Amendment	1540-1-1-.05 Out-of-State Persons Who are Permitted to Participate as In-State Persons	Will Burns Suite 1900, Parkway Towers 404 James Robertson Parkway Nashville, TN 37243-0830 (615) 741-7571	Nov 28, 2001
07-21	July 27, 2001	0400 Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-7</i> <i>Solid Waste Processing and Disposal</i> 1200-1-7-.01 Solid Waste Management System: General 1200-1-7-.02 Permitting of Solid Waste Storage, Processing and Disposal Facilities 1200-1-7-.03 Requirements For Financial Assurance 1200-1-7-.04 Specific Requirements For Class I, II, III, And IV Disposal Facilities 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste 1200-1-7-.09 Waste Disposal Reduction Goal 1200-1-7-.11 Requirements for Compost and Composting Facilities 1200-1-7-.12 Requirements For Certification of Operators, Attendants, and Responsible Persons For Solid Waste Landfills	Glenn Birdwell Division of Solid Waste Management L & C Tower, 5th Fl 401 Church St Nashville, TN 37243 (615) 532-0788	Oct 10, 2001

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECT DATE
07-30	July 31, 2001	1700 Treasury Department Retirement Division	Proposed Rules	New Rule Amendment	<i>Chapter 1700-3-1</i> <i>TN Consolidated Retirement System</i> 1700-3-1-.31 Examination of Employer Records. 1700-3-1-.13 Change of Retirement Plan within Thirty (30) Days of the Date of the Retirement Notice Letter	Mary Krause, General Counsel 10th Fl, Andrew Jackson Bldg Nashville, TN 37243-0230 (615) 741-7063	Nov 28, 2001
07-31	July 31, 2001	0180 Financial Institutions Credit Union Division	Proposed Rules	New Rules	<i>Chapter 0180-29</i> <i>Credit Union Field of Membership Expansions</i> 0180-29-.01 Purpose. 0180-29-.02 General requirements. 0180-29-.03 Definitions. 0180-29-.04 Inclusion of a group with an occupational common bond. 0180-29-.05 Application to include a separate occupational group. 0180-29-.06 Streamlined procedure for small occupational groups. 0180-29-.07 Inclusion of a group with an associational common bond. 0180-29-.08 Application to include a separate associational group. 0180-29-.09 Expansion of a community credit union. 0180-29-.10 Application to include a separate community group. 0180-29-.11 Application deemed complete. 0180-29-.12 Approval of application. 0180-29-.13 Special circumstances. 0180-29-.14 Credit Union Mergers. 0180-29-.15 Field of Membership changes as a result of a sponsor corporation's reorganization or restructuring.	Tina G. Miller, Staff Attorney 27th Fl Snodgrass Bldg 615/532-1030	Nov 28, 2001

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

Applications will be heard at the September 26, 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 July 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

Cumberland Medical Center
421 South Main Street
Crossville (Cumberland Co.), TN 38555-5031
John Wellborn – (615)—665-2022
CN0106-032

The addition of a second magnetic resonance imaging (MRI) unit and a second computed axial tomography (CT) unit to its Imaging Department at Cumberland Medical Center.
\$ 4,473,450.00

Premier Diagnostic Imaging Center-Crossville
West Adams, Lantana Road & Miller ByPass
Crossville (Cumberland Co.), TN 38555
William H. West – (615)—259-1450
CN0106-033

The establishment of an outpatient diagnostic imaging center, the acquisition of a magnetic resonance imaging (MRI) scanner, the acquisition of a computed axial tomography (CT) scanner, and the initiation of magnetic resonance imaging services at property located at West Adams, Lantana Road, and Miller Bypass, Crossville, Tennessee.
\$ 4,524,902.00

NAME AND ADDRESS	DESCRIPTION
Fort Sanders Parkwest Medical Center 9352 Park West Boulevard Knoxville (Knox Co.), TN 37923 Wayne Heatherly – (865)—694-5700 CN0106-034	The addition of a patient tower, renovation of existing space, and demolition of a patient tower at Fort Sanders Parkwest Medical Center, 9352 Park West Boulevard, Knoxville, Tennessee in Knox County. This project also includes the addition of a cardiac catheterization laboratory. \$ 93,962,612.00
Jefferson Memorial Hospital, Inc. 110 Hospital Drive Jefferson City (Jefferson Co.), TN 37760 Mike Hicks – (865)—471-2500 CN0106-035	The initiation of Magnetic Resonance Imaging “MRI” services. Jefferson Memorial Hospital will provide the mobile MRI under arrangement with St. Mary’s Health System. The MRI will be located at 110 Hospital Drive in Jefferson City, one day per week. \$ 425,000.00
St. Mary’s Medical Center 900 E. Oak Hill Avenue Knoxville (Knox Co.), TN 37917 David T. Lewis – (865)—545-7547 CN0106-036	The initiation of mobile Magnetic Resonance Imaging “MRI” services. Jefferson Memorial Hospital will provide the mobile MRI under arrangement with GE Medical Systems, Inc. The MRI will be located at 900 E. Oak Hill Avenue, Knoxville, TN, four days per week. \$ 1,685,000.00
NHC HealthCare, Hendersonville 370 Old Shackle Island Road Hendersonville (Sumner Co.), TN 37075 Bruce K. Duncan – (615)—890-2020 CN-0106-037	The addition of five (5) dually certified nursing home beds to the existing one-hundred seventeen (117) bed NHC Healthcare – Hendersonville, for a total of one-hundred twenty-two (122) nursing home beds located at 370 Old Shackle Island Road in Hendersonville, Sumner County, Tennessee. \$ 88,300.00
Cool Springs Surgery Center 2009 Mallory Lane, Suite 100 Franklin (Williamson Co.), TN 37064 Charles T. Neal – (615)—234-7901 CN0106-038	The establishment of lithotripsy services to be located at 2009 Mallory Lane, Suite 100, Franklin, Williamson County, Tennessee. \$ 1,360,000.00
East Memphis PET Imaging Center 6005 Park Avenue Memphis (Shelby Co.), TN 38119 John Wellborn – (615)—665-2022 CN0106-039	The establishment of an Outpatient Diagnostic Center (ODC) for outpatient Positron Emission Tomography (PET) imaging services at 6005 Park Avenue, Memphis, Tennessee. This project includes the acquisition of a PET scanner. \$ 1,705,000.00

NAME AND ADDRESS

DESCRIPTION

Memorial Diagnostics, L.L.C.
5915 Mountain View Road
Ooltewah (Hamilton Co.), TN 37363
Sandra Curtis – (423)—495-8562
CN0106-040

The establishment of an outpatient diagnostic center and the initiation of magnetic resonance imaging services located at 5915 Mountain View Road, Ooltewah, Tennessee.
\$ 6,472,749.00

East Memphis Open MRI
5240 Poplar Avenue
Memphis (Shelby Co.), TN 38117
John Wellborn – (615)—665-2022
CN0106-042

The establishment of an outpatient diagnostic center with magnetic resonance imaging (MRI) services located at 5240 Poplar Avenue, Memphis, Tennessee.
\$ 3,346,740.00

Community Care of Rutherford County, Inc.
901 East County Farm Road
Murfreesboro (Rutherford Co.), TN 37127
Charles M. King – (615)—893-2624
CN0106-043

The replacement of thirty-six (36) nursing facility beds at 901 East County Farm Road in Murfreesboro, Tennessee. The project will include the addition of 15,000 square feet to the facility and the renovation of approximately 5,000 square feet of existing space.
\$ 3,215,523.00

The Surgery Center
315 North Washington Avenue
Cookeville (Putnam Co.), TN 38501
William H. West – (615)—259-1450
CN0106-044

The establishment of an ambulatory surgical treatment center (ASTC) to be located at 315 North Washington Avenue, Putnam County, Tennessee. The center will contain two (2) operating rooms.
\$ 2,796,783.00

Upper Cumberland Physicians Surgery Center
1059 Neal Street, Suite B
Cookeville (Putnam Co.), TN 38501
John Wellborn – (615)—665-2022
CN0106-045

The establishment of an ambulatory surgical treatment center and initiation of multi-specialty outpatient surgery at 1059 Neal Street, Suite B, Cookeville, Tennessee. The center will contain two (2) operating rooms.
\$ 2,503,193.00

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800

**PETITION FOR DECLARATORY ORDER BEFORE
DIVISION OF THE WORKERS' COMPENSATION**

The petitioner, NHC Insurance Company, pursuant to T.C.A. § 4-5-223 and Tenn. Comp. Rules & Regs. 1360-4-1-.07, hereby files this petition for a declaratory order and, for its petition, states as follows:

1. Name of Petitioner: NHC Insurance Company.
2. Address of Petitioner: 100 Vine Street, City Center, Murfreesboro, Tennessee 37130.
3. Agency Order on which Declaratory Order is Sought: Attached as Exhibit A.
4. Statement of Facts of Controversy & Description of How Order Affects or Should Affect Petitioner:

This is a petition for a declaratory order under T.C.A. § 4-5-223 from an order of a workers' compensation specialist directing the petitioner, a workers' compensation carrier, to pay certain broadly-defined medical benefits in a workers' compensation case, despite a utilization review determination obtained pursuant to the Department's own Rules and Regulations which found that the subject medical treatment was not medically necessary or appropriate. This utilization review determination was not appealed by the employee. Copies of the Department's order and the utilization review determination are attached as Exhibits A and B, respectively.

The employee, Lois Underwood, has filed a complaint in the Maury County, Tennessee Circuit Court seeking workers' compensation benefits. Initially, Ms. Underwood had a fractured ankle, which was treated by Dr. Frederick Wade of Columbia, Tennessee by open reduction and internal fixation. However, an infection and/or wound developed at or near the surgical site, and Ms. Underwood was also diagnosed with reflex sympathetic dystrophy (RSD).

In an office note, Dr. Wade recommended a referral to pain management. A copy of this office note is attached as Exhibit C.

Pursuant to the statutorily-mandated Rules and Regulations of the Department, the petitioner obtained utilization review on this recommendation. More specifically, T.C.A. § 50-6-122 provides in pertinent part:

. . . It is also the legislative intent to control increasing medical costs in workers' compensation matters by establishing cost control mechanisms to ensure cost-effective delivery of medical care services by employing a program of medical case management and a program to review the utilization and quality of medical care services. . . .

T.C.A. § 50-6-122(a)(1). T.C.A. § 50-6-102(a)(15) defines "utilization review" as the "evaluation of the necessity, appropriateness, efficiency and quality of medical care services provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of the medical care services provided. . . ." The Rules and Regulations of the Division of Workers' Compensation of the Tennessee Department of Labor and Workforce Development, which are promulgated pursuant to the commissioner's rule-making authority, provide in pertinent part as follows:

0800-2-6-.02 UTILIZATION REVIEW SYSTEM.

Each insurer who provides workers' compensation insurance regulated by the provisions of TCA, Title 50, Chapter 6, or self-insured employer *shall* provide for a system of utilization review for cases involving compensable injuries under TCA, Title 50, Chapter 6. Utilization review conducted pursuant to these rules shall comply with the requirements of TCA, Title 56, Chapter 6, Part 7 [Public Chapter 812 of the Acts of 1992]. Any insurer providing workers' compensation insurance under TCA, Title 50, Chapter 6, *shall* provide or contract for utilization review services for workers' compensation cases.

0800-2-6-.05 OUTPATIENT REVIEW.

- (1) Each employer or employer's insurer covered by these rules shall establish and maintain a system of utilization review of outpatient medical care in outpatient cases involving employees claiming benefits under the Workers' Compensation Law.

0800-2-6-.07 APPEALS OF CERTIFICATION DECISIONS.

Any party aggrieved of a decision of the employer's utilization review provider concerning preadmission, outpatient or inpatient review certifications, who has appealed such decision under the appeal procedure established pursuant to TCA §56-6-705 [Section 6 of Public Chapter 812 of the Acts of 1992), may request in writing that the medical Director review the employer's utilization review provider's decision concerning certification or denial of hospitalization. With the assistance of the contractor, as needed, the medical Director shall obtain a second medical opinion by its peer review consultant with respect to such requests for review and shall expeditiously respond, in writing, to the injured or disabled worker, employer, insurer, hospital, health care provider and third party administrator, if any, concerning the results of its review.

(Emphasis added.)

These statutes and rules evidence a legislative intent for employers and workers' compensation insurers to utilize *and rely on* utilization review determinations, and the petitioner attempted to do so in this case. The utilization review determination in this case was that the referral to pain management was not medically necessary or appropriate.

However, despite the clear legislative and regulatory intent that utilization review determinations be honored absent a successful appeal pursuant to Rule 0800-2-6-.07 (quoted above), the Department issued the order attached as Exhibit A, apparently relying completely on the opinion of the very physician whose recommendation was being reviewed and apparently ignoring the utilization review determination.

5. Description of Requested Ruling: The petitioner seeks a declaratory order that:
 - (a) The Department's order in contravention of the utilization review determination is contrary to the letter and spirit of the statutes and rules cited and quoted above;
 - (b) A proper utilization review determination may not be contravened by a workers' compensation specialist but, in fact, must be respected absent a successful appeal through the proper channels;
 - (c) If a workers' compensation employee is dissatisfied with a utilization review determination, the employee's remedy is the appeals process set forth in Rule 0800-2-6-.07, and not to have a specialist issue a contravening order adopting the very recommendations being reviewed (i.e., those of the treating physician); and
 - (d) The Department's order is void and of no effect for the above reasons.
The petitioner also respectfully requests any further general or other relief to which it may appear entitled.

Respectfully submitted,

PARKER, LAWRENCE, CANTRELL & DEAN
M. Bradley Gilmore (13804)
5th Fl., Noel Place, 200 4th Ave. N.
Nashville, TN 37219
(615) 255-7500
Attorneys for Petitioner

**DEPARTMENT OF TREASURY - 1700
COLLATERAL POOL BOARD**

CHAPTER 1700-4-1

NOTICE OF WITHDRAWAL FROM THE COLLATERAL POOL

Pursuant to the provisions of Tennessee Code Annotated, Section 9-4-516, the Tennessee State Treasurer hereby announces that First Vantage Bank — Tennessee has given written notice that it is voluntarily withdrawing from the Collateral Pool effective January 21, 2002. On the effective date of withdrawal, the State Treasurer is authorized to transfer the collateral pledged to secure public deposits held by First Vantage Bank (or its successor). The transfer will be made as jointly directed by First Vantage Bank (or its successor) and the public depositors to ensure that public depositors are adequately collateralized individually.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules regarding the threat of foot and mouth disease, Chapter 0080-2-1 Health Requirements For Admission And Transportation Of Livestock And Poultry, 5 T.A.R. (May 2001) - Effective April 4, 2001 through September 16, 2001. (04-01)

- 1340 - Department of Safety - Division of Driver License Issuance - Emergency rules dealing with verification of residence and identification, Chapter 1340-1-13 Classified and Commercial Driver Licenses, 7 T.A.R. (July 2001) - Effective June 22, 2001 through December 4, 2001. (06-29)

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PROPOSED RULES

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180 CREDIT UNION DIVISION

CHAPTER 0180-29 CREDIT UNION FIELD OF MEMBERSHIP EXPANSIONS

Presented herein are proposed rules of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these rules 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 in Room 408 of the John Sevier Building located at 500 Charlotte Avenue, Nashville, Tennessee 37243-0705 and in the Department of State, 8th Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 37243-0293, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted 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 the proposed rules contact: Tina G. Miller, Staff Attorney, Tennessee Department of Financial Institutions, 27th Floor William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 37243-0293, 615/532-1030.

NEW RULE

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0180-29-.01	Purpose.	0180-29-.10	Application to include a separate community group.
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0180-29-.04	Inclusion of a group with an occupational common bond.	0180-29-.13	Special circumstances.
0180-29-.05	Application to include a separate occupational group.	0180-29-.14	Credit Union Mergers.
0180-29-.06	Streamlined procedure for small occupational groups.	0180-29-.15	Field of Membership changes as a result of a sponsor corporation's reorganization or restructuring.
0180-29-.07	Inclusion of a group with an associational common bond.		
0180-29-.08	Application to include a separate associational group.		
0180-29-.09	Expansion of a community credit union.		

0180-29-.01 PURPOSE.

- (1) This chapter is adopted for the purpose of establishing the application process for a credit union to expand its field of membership to include a separate group with either: (a) a common bond of occupation or association; or (b) a group that constitutes a well-defined neighborhood, community or rural district.
- (2) Every state credit union's bylaws define the group(s) the credit union is legally entitled to serve. The credit union must amend its bylaws to effectuate a field of membership expansion. Each bylaw amendment must be approved by the Commissioner.

- (3) State credit unions will be allowed to have, as a minimum, at least as much flexibility as federal credit unions in the regulation of fields of membership subject to regulation by the Commissioner for the purpose of maintaining the credit union's safety and soundness.
- (4) All fields of membership in existence on the effective date of this rule shall not be impacted by this rule.

Authority: *T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).*

0180-29-.02 GENERAL REQUIREMENTS.

- (1) T.C.A. § 45-4-301(a) limits credit union membership "to groups having a common bond of occupation or association or to groups within a well-defined neighborhood, community, or rural district." Consequently, any group included within the field of membership of a credit union must:
 - (a) Share a common bond of occupation or association; or
 - (b) Constitute a community.
- (2) A credit union may include different types of occupational and/or associational groups in its field of membership. However, an occupational and/or associational credit union may not expand its field of membership by adding a community. Likewise, a community credit union cannot expand its field of membership by adding an occupational or associational group outside of its community.
- (3) A number of persons by virtue of their close relationships to a common bond group may be included, in the applicant's option, in the field of membership. These include the following:
 - (a) Spouses of persons who died while within the field of membership of the credit union;
 - (b) Employees of the credit union;
 - (c) Persons retired as pensioners or annuitants from the above employment;
 - (d) Immediate family members of a credit union member or immediate family members of persons eligible for credit union membership; or
 - (e) Volunteers for member organizations.

Any bylaw amendment seeking to add the persons identified in subsection (3)(a)-(e) above shall be deemed to have the Commissioner's approval for the bylaw amendment.

Authority: *T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).*

0180-29-.03 DEFINITIONS.

- (1) For purposes of this Chapter, unless the context otherwise provides:
 - (a) "Affiliate" of an enterprise means a person that controls, is controlled by, or is under common control with, the enterprise. "Control" as used herein means twenty-five percent or greater stock ownership.

- (b) “Associational Common Bond” means a current, unifying factor among a group of persons, that is based on membership in a bona fide organization whose primary purpose is other than providing eligibility for credit union services. Such an organization must be primarily composed of natural persons who are eligible to participate in the organization’s activities that develop common loyalties, mutual benefits and mutual interests. Such an organization also must have clearly defined membership eligibility requirements, and must hold regular meetings open to all members. The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements, the Commissioner will consider the totality of the circumstances, such as: whether members pay dues; whether members participate in the furtherance of the goals of the association; whether the members have voting rights; whether the association maintains a membership list; the association’s membership eligibility requirements; the frequency of meetings; and, whether the association sponsors other activities which clearly demonstrate that the members of the group meet and interact regularly to accomplish the objectives of the association. Students of an institution or members of a church have an associational common bond and may qualify without having to produce a charter or bylaws. The following associations do not have a sufficient associational common bond: associations formed primarily to obtain credit union membership or associations based on a client or customer relationship, such as an insurance company’s customers or a buyer’s club. The association itself may be included in the field of membership.
- (c) “Community Common Bond” means a current unifying factor among a group of persons and/or entities that is based on residence or employment within a well-defined geographic area, that is recognized by those who live or work there as a neighborhood, community, or rural district.
- (d) “Credit union” means a credit union organized and operating under Title 45, chapter 4.
- (e) “Commissioner” means the Commissioner of the Tennessee Department of Financial Institutions.
- (f) “Occupational Common bond” means a current, unifying factor among a group of natural persons that is based on employment by or a work-related relationship with a specified employer. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its subsidiaries and persons under contract to work regularly for an enterprise may be considered under a single occupational common bond. Each category to be served (e.g., subsidiaries, contractors) should be separately listed in the bylaws. All occupational common bonds should include a geographic designation. The employer may also be included in the common bond.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.04 INCLUSION OF A GROUP WITH A COMMON BOND OF OCCUPATION.

Except as permitted by Rule 0180-29-.06, if a credit union wants to include a separate group with an occupational common bond in its field of membership, it must make application to the Commissioner to amend its bylaws in accordance with T.C.A. §§ 45-4-102(b) and 45-4-1003(e). The application must be submitted to the Commissioner in duplicate and must include the information as required by Rule 0180-29-.05.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.05 APPLICATION TO INCLUDE A SEPARATE OCCUPATIONAL GROUP.

- (1) The application to include a separate group with a common bond of occupation must include at least the following information:

- (a) The name of the applicant credit union;
 - (b) Evidence that two-thirds (2/3) of the applicant's board of directors have adopted the proposed amendment;
 - (c) A description of the employer including its name, number of employees, the geographic location of those employees and the group's proximity to the credit union's service facility;
 - (d) If the group to be added is located outside the State of Tennessee, provide written evidence that the credit union has complied with the other state's laws; and
 - (e) A statement from a senior officer of the employer or any other writing outlining the wishes of the employees:
 - 1. That the employer desires membership for its employees in the applicant;
 - 2. Whether its employees are currently eligible for membership, based upon such employment, in another state or federally chartered credit union. If the employees of the group are eligible for membership in another credit union based upon such employment, the applicant must make best efforts to provide a statement of no-objection from the other credit union; and
 - (f) Any other information requested by the Commissioner.
- (2) **Overlap:** If the applicant cannot obtain the letter of no-objection described in subsection (1)(e)(2.), after having made a best efforts attempt to do so, the Commissioner may consider the following:
- (a) The attempts made by the applicant to informally resolve the overlap with the affected credit union;
 - (b) Documentation concerning the interests of the group to be added. A petition signed by a majority of the group's members will be strongly considered. The applicant could also include a letter from the sponsoring employer concerning the wishes of the group;
 - (c) Evidence that the other credit union has failed to adequately serve the group after a reasonable period of time, and how the applicant plans to improve this service.

The applicant must supply a copy of the information required in (a), (b) and (c) of this subsection to the other credit union, which will be given thirty (30) days following receipt of such information to submit to the Department any comments on the overlap. The response may want to include such information as the percentage of the group who participates as members in the credit union and the financial impact that the overlap might have on the credit union.

Authority: *T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).*

0180-29-.06 STREAMLINED EXPANSION PROCEDURE.

- (1) Credit unions may apply to the Commissioner for approval of an enabling bylaw amendment that would allow them to use the streamlined expansion procedure set forth in this section ("SEP procedure") to include different types of small groups with a common bond of occupation in their field of membership.
- (2) The credit union must first apply to the Commissioner for approval of an enabling amendment that provides as follows:

Groups of persons with occupational common bonds which are located within the credit union's approved operational area, which have provided a written request for service to the credit union, which do not presently have credit union service available, and which have no more members in the group than the maximum number established by the Commissioner for additions under this provision; provided however, that the Commissioner may permanently or temporarily revoke the power to add groups under this provision upon a finding, in the Tennessee Department of Financial Institutions' discretion, that permitting additions under this provision are not in the best interests of the credit union, its members, or the National Credit Union Share Insurance Fund.

Once the application has been approved by the Commissioner, the credit union may immediately begin serving any group in compliance with this section and the enabling amendment. The enabling amendment may not be amended without the prior written approval of the Commissioner.

- (3) The enabling amendment will in substance permit a credit union to add a small employee group to its field of membership if:
 - (a) The employer is located within the operational area of twenty-five miles (or such other-approved operational area) from one of the credit union's service facilities;
 - (b) A senior officer of the employer has provided a written request to the credit union for service, or any other writing outlining the wishes of the employees to join the credit union;
 - (c) The employees of the group do not have credit union service available based on such employment; and
 - (d) The number of employees of the group do not exceed five hundred or any larger maximum number as authorized by the Commissioner;
- (4) The credit union must maintain a control log of all groups added to its field of membership in accordance with the SEP procedures. The control log must include the board approval of the group, the date of the board approval, the name and location of the employer, the number of employees included, and the number of miles to the nearest credit union service facility.
- (5) The size limit of the group is based on the number of employees of the group at the time the bylaws are amended to include the group. Several groups may be included simultaneously using the SEP procedure, however the number of employees in each group must be within the small group size limit.
- (6) The Commissioner may revoke the ability of a credit union to use the SEP procedure if the Commissioner determines that it is being used to circumvent the regular procedure for inclusion of occupational groups in the credit union's field of membership. The Commissioner may also revoke the ability of a credit union to use the SEP procedure if a credit union experiences problems.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.07 INCLUSION OF A GROUP WITH AN ASSOCIATIONAL COMMON BOND.

If a credit union wants to include a separate group with a common bond of association in its field of membership it must make application to the Commissioner to amend its bylaws in accordance with T.C.A. §§ 45-4-102(b) and 45-4-1003(e). The application must be submitted to the Commissioner in duplicate and must include the information as required by 0180-29-.08.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.08 APPLICATION TO INCLUDE A SEPARATE ASSOCIATIONAL GROUP.

- (1) The application to include a separate group with a common bond of association must include at least the following information:
 - (a) The name of the applicant credit union;
 - (b) Evidence that two-thirds (2/3) of the applicant's board of directors have adopted the proposed amendments;
 - (c) A detailed description of the group including its charter or articles of incorporation, its bylaws, the qualifications and requirements for membership, the number and geographic location of its current members and the group's proximity to the credit union's service facility;
 - (d) If the group to be added is located outside the State of Tennessee, provide written evidence that the credit union has complied with the other state's laws;
 - (e) A resolution from the petitioning group's governing body providing:
 1. That the members have been informed of the proposal to affiliate with the applicant and desire to be associated with the applicant;
 2. Whether the members of the group are currently eligible for membership, based upon their association, in a state or federally chartered credit union. If the members of the association are eligible for membership in another credit union based upon membership in the association, the applicant must make best efforts to provide a statement of no-objection from the other credit union;
 - (f) Any other information requested by the Commissioner.
- (2) Overlap Protection: If the applicant cannot obtain the letter of no-objection described in subsection (1)(e)(2.) above, after having made a best efforts attempt to do so, the Commissioner may consider the following:
 - (a) The attempts made by the applicant to informally resolve the overlap with the affected credit union;
 - (b) Documentation concerning the interests of the association to be added. A petition signed by a majority of the association's members will be strongly considered. The applicant could also include a letter from the sponsoring association outlining the wishes of its members; and
 - (c) Evidence that the other credit union has failed to adequately serve the association after a reasonable period of time, and how the applicant plans to improve this service.

The applicant must supply a copy of the information required in (a), (b) and (c) of this subsection to the other credit union, which will be given thirty (30) days following receipt of such information to submit to the Department any comments on the overlap. The response may want to include such information as the percentage of the association who participate as members in the credit union and the financial impact that the overlap might have on the credit union.

Authority: *T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).*

0180-29-.09 EXPANSION TO ADD A SEPARATE COMMUNITY GROUP.

If a community credit union wants to include in its field of membership a separate community, it must make application to the Commissioner to amend its bylaws in accordance with T.C.A. §§ 45-4-102(b) and 45-4-1003(e). The application must be submitted to the Commissioner in duplicate and must include the information as required by 0180-29-.10. The approval of a credit union's application for inclusion of a separate community group in its field of membership will not preclude approval of another credit union's application to include the same or a portion of the same community group in its field of membership as community chartered credit unions are not entitled to any overlap protection.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.10 APPLICATION TO INCLUDE A SEPARATE COMMUNITY GROUP.

- (1) The application to include a separate community must include at least the following information:
 - (a) The name of the applicant credit union;
 - (b) Evidence that two-thirds (2/3) of the applicant's board of directors have adopted the proposed amendment;
 - (c) A detailed description of the neighborhood, community or rural district including a map setting forth its geographic boundaries and its current population;
 - (d) Current financial statements for the credit union, including an income statement and a summary of loan delinquencies;
 - (e) Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the persons who live, work, or worship in the area are interested in affiliating with the credit union;
 - (f) Written documentation reflecting the number of residents, employers and civic leaders contacted and the number of such contacts who are in favor of the credit union, opposed to the credit union and who will join the credit union if the community group is added;
 - (g) Evidence that the proposed area is a well-defined neighborhood, community or rural district;
 - (h) A list of credit unions and other financial institutions with a home or branch office in the proposed area;
 - (i) Evidence that the applicant has given written notice to all other credit unions having an office within the proposed community of its intent to add the community to its field of membership. The notice shall provide that any credit union wishing to comment on the application shall submit written comments to the Department of Financial Institutions within twenty (20) days of the receipt of the Notice;
 - (j) Marketing plan and business plan which address how the community will be served; and
 - (k) Any other information requested by the Commissioner.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.11 APPLICATION DEEMED COMPLETE.

- (1) An application filed pursuant to this Chapter is deemed complete when the Commissioner has received all of the information required by this Chapter;
- (2) If an incomplete application is received, the Commissioner will give written notice to the applicant no later than thirty (30) days from the date the original application was received that further information is necessary. The applicant will be allowed thirty (30) days after receipt of the notice to provide the requested information. If the requested information is not provided within thirty (30) days, or such additional time as the Commissioner may approve, the application will be denied as being incomplete.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.12 APPROVAL OF APPLICATION.

- (1) The Commissioner shall give written approval or denial of an application made in conformance with this Chapter within thirty days from the date it is deemed complete. The Commissioner's decision will take into consideration the following general criteria and other issues or facts that may be relevant to the application:
 - (a) Whether the application is consistent with the provisions of T.C.A. § 45-4-101 et seq. and this Chapter;
 - (b) Whether the proposed new group possesses a common bond of occupation or association, or constitutes a community, as defined in Rule 0180-29-.03;
 - (c) Whether the applicant is in a safe and sound condition and possesses the financial and managerial capability to provide credit union service to the proposed group in a safe and sound manner;
 - (d) Whether approval of the application might reasonably threaten the viability of another credit union; and
 - (e) Whether approval of the application will adversely impact the safety and soundness of the applicant.
- (2) In most cases, field of membership amendments will only be approved for credit unions which are operating satisfactorily. If a state credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources may be hampered or further strained by increasing the field of membership, thereby increasing the credit union's problems.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.13 SPECIAL CIRCUMSTANCES.

An applicant credit union may request that one or more of the provisions of this Chapter be waived if an emergency exists which requires immediate inclusion of a separate group in order to preserve the viability of the applicant. The request for waiver may be granted if, in the opinion of the Commissioner, the request has a reasonable probability of remedying an emergency situation.

Authority: T.C.A. §§ 45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

0180-29-.14 CREDIT UNION MERGERS.

When two credit unions merge, the surviving credit union shall obtain the entire field of membership of the merged credit union when the members of the merging credit union have approved of the merger in accordance with T.C.A. 45-4-903(a). However, in the event of an emergency merger, the Commissioner may permit a surviving credit union to maintain the entire field of membership of the merging credit union even when there has been no vote of the members approving of the merger.

Authority: T.C.A. §§ 45-1-107(h), 45-4-501(9), 45-4-903, and 45-4-1001(b).

0180-29-.15 - FIELD OF MEMBERSHIP CHANGES AS A RESULT OF SPONSOR'S REORGANIZATION OR RESTRUCTURING.

- (1) If a sponsor group expands its operations the credit union can serve the new employees if they are within the credit union's field of membership as described in the credit union's bylaws.
- (2) If a sponsor group expands its operations by acquiring a new subsidiary, the new group cannot be served until the subsidiary is included in the credit union's field of membership. The credit union will need to file an application to expand its field of membership.
- (3) Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, the credit unions must apply to the Commissioner for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, the Commissioner will permit a complete overlap of the group(s) at issue. However, the credit unions cannot serve any other multiple groups that may be in the field of membership of the other credit union.

Authority: T.C.A. §§45-1-107(h), 45-4-102(b), 45-4-301(a), 45-4-501(9), 45-4-1001(b) and 45-4-1003(e).

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2001, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2001. (07-31)

TENNESSEE HIGHER EDUCATION COMMISSION - 1540**CHAPTER 1540-1-1
RESIDENCY**

Presented herein is a proposed amendment of the Tennessee Higher Education Commission submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Higher Education Commission to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue to the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed in Suite 1900 of Parkway Towers located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0830 and in the Department of State, Administrative Procedures Division, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted 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 proposed rule, contact: Rosie Padgett, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243-0830, (615) 741-3605.

The text of the proposed amendment is as follows:

AMENDMENTS

Rule 1540-1-1-.05 Out-of-State Persons Who are Permitted to Participate as In-State Persons is amended by adding a new paragraph to read as follows:

1540-1-1-.05 OUT-OF STATE PERSONS WHO ARE PERMITTED TO PARTICIPATE AS IN-STATE PERSONS.

- (9) Active-duty military personnel who begin a degree program while stationed in Tennessee or Ft. Campbell, Kentucky and are deployed or transferred prior to completion of their degree program may continue to enroll in the Tennessee institution and be classified as out-of-state residents, but shall be permitted to participate in Commission programs as if they were classified in-state residents. This classification remains in effect as long as he / she completes at least one (1) course for credit each twelve (12) month period after the transfer or deployment. Exceptions may be made in cases where the service member is deployed to an area of armed conflict for periods exceeding twelve (12) months.

Authority: T.C.A. §§49-7-203 and 49-7-301.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of July, 2001, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2001. (07-20)

DEPARTMENT OF HUMAN SERVICES - 1240
TENNESSEE BUSINESS ENTERPRISES

CHAPTER 1240-6-4

Presented herein are proposed amendments of the Department of Human Services submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting a hearing is filed with in thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Office of the General Counsel, 15th Floor, Citizens Plaza State Office Building, 400 Deaderick Street, Nashville, Tennessee 37248-0006, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or by a majority vote of any standing committee of the General Assembly.

For a copy of the proposed rule contact: Lexie Whittemore, Legal Assistant, Office of General Counsel, 400 Deaderick Street, Nashville, Tennessee 37248-0006, Telephone: (615) 313-6023.

DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES

CHAPTER 1240-6-4

AMENDMENTS

Rule 1240-6-4-.01, Entry Level Training, is amended by deleting Paragraph (2) in its entirety and by substituting instead the following, so that, as amended, Paragraph (2) shall read:

- (2) Generally, the academic material shall cover, but not necessarily be limited to, the following:
 - (a) Randolph-Sheppard Act and the implementing regulations;
 - (b) State law governing the operation of the Tennessee Business Enterprises program and the implementing regulations;
 - (c) Tennessee Business Enterprises Operations Manual;
 - (d) Financial analysis;
 - (e) Inventory control;
 - (f) Record-keeping and reporting;
 - (g) Sales taxes and gross receipt taxes, including, but not limited to, how to calculate the tax liability and when to file the returns;

- (h) Sufficiency and variety of merchandise and how it should be displayed;
- (i) Sanitation practices and food contamination;
- (j) Customer service;
- (k) Safety;
- (l) Vending machine instruction;
- (m) Employee/employer taxes and unemployment taxes;
- (n) Insurance coverage, including, but not limited to, public liability, products liability and workers compensation.

Authority: TCA §§ 4-3-103, 4-5-201 et seq., 71-1-105(12); 71-4-604(c); and 34 CFR 395.11.

The proposed rules set out herein were properly filed in the Department of State on the 20th day of July, 2001, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition for a rulemaking hearing, will become effective on the 28th, day of November, 2001. (07-19)

**TREASURY DEPARTMENT - 1700
RETIREMENT DIVISION**

**CHAPTER 1700-3-1
TENNESSEE CONSOLIDATED RETIREMENT SYSTEM**

Presented herein are proposed rules and amendments of the Board of Trustees of the Tennessee Consolidated Retirement System submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Board to promulgate these rules and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules and amendments are published. Such petition to be effective must be filed in the Treasury Department, Division of Retirement, Tenth Floor, Andrew Jackson State Office Building located at Fifth and Deaderick, Nashville, Tennessee 37243, and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tower, Eighth Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rules and amendments, or submitted by a municipality which will be affected by the rules and amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed rules and amendments, contact: Mary Krause, General Counsel, Tennessee Treasury Department; 10th Floor, Andrew Jackson State Office Building; Nashville, Tennessee 37243-0230; (615) 741-7063.

The text of the proposed rules and amendments is as follows:

NEW RULES

TABLE OF CONTENTS

1700-3-1-.31 Examination of Employer Records.

1700-3-1-.31 EXAMINATION OF EMPLOYER RECORDS.

All books, records and documents relative to the employment and/or compensation of employees of any employer participating in the Retirement System or of any instrumentality created by any one (1) or more such employers shall be subject to examination by the Retirement System during normal business hours through on-site review. In the alternative, and in the Retirement System's sole discretion, such records may be provided through the mail or other methods of data transmission. The examination may be conducted by personnel of the Retirement System, the Office of the Comptroller of the Treasury or a licensed independent certified public accountant selected by the Retirement System. Such examinations shall take place as often as necessary, and to the extent necessary, in the discretion of the Retirement System, to determine compliance with the laws governing the Retirement System.

Authority: T.C.A. § § 8-34-313, 8-34-301, 8-34-314, 8-34-318 and 8-35-205.

AMENDMENTS

Table of Contents is amended by deleting the figures and words "1700-3-1-.13 Change of Retirement Plan within Thirty (30) Days of the Date of the Retirement Notice Letter" and by substituting instead the figures and words "1700-3-1-.13 Change of Retirement Plan within Sixty (60) Days after Effective Date of Retirement or the Date of the Retirement Notice Letter".

Authority: T.C.A. § § 8-34-313 and 8-36-605.

1700-3-1-.13 Change of Retirement Plan within Thirty (30) Days of the Date of the Retirement Notice Letter is amended by deleting the same in its entirety and by substituting instead the following:

1700-3-1-.13 CHANGE OF RETIREMENT PLAN WITHIN SIXTY (60) DAYS AFTER EFFECTIVE DATE OF RETIREMENT OR THE DATE OF THE RETIREMENT NOTICE LETTER. Any recently retired member who has been put on retirement benefits having selected either the regular or maximum plan, social security leveling, or an optional form of retirement and who wishes to change to a different plan of retirement may do so provided the member notifies the Retirement Division within sixty (60) days after the member's effective date of retirement or the date of the retirement notice letter, provided the member repays to the Retirement Division any benefit overpayment resulting from the change. In computing the period of time prescribed in this rule, the first day (effective date of retirement or date on the notice letter) shall be excluded and the last day of the period is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

Authority: T.C.A. § § 8-34-313 and 8-36-605.

The proposed rules and amendments set out herein were properly filed in the Department of State on the 31st day of July, 2001, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2001. (07-30)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

0780 - Department of Commerce and Insurance - Public Necessity Rules regarding the privacy of nonpublic personal information, chapter 0780-1-72 Privacy of Consumer Information Regulations, 6 T.A.R. (June 2001) - Filed May 14, 2001: effective through November 19, 2001. (05-21)

DEPARTMENT OF HUMAN SERVICES - 1240 **FAMILY ASSISTANCE DIVISION**

CHAPTER 1240-1-50 **STANDARD OF NEED/INCOME**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. TCA Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act [Section 10, Item 22 , Senate Bill 1914/House Bill 1943 (2001)] which did not occur until June 30th of 2001, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, it is not possible to establish rules by regular rulemaking procedures.

For a complete copy of these public necessity rules, contact: Phyllis Simpson, Assistant General Counsel, Tennessee Department of Human Services, Tennessee Tower, 312 8th Avenue North, 26th Floor, Nashville, TN 37243, telephone number (615) 741-9534.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 STANDARD OF NEED/INCOME. The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

- (1) Families First Standards
 - (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
 - (b) Gross Income Standard (GIS). This standard is set by federal law at 185% of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the AG is not eligible for Families First.
 - (c) Standard Payment Amount (SPA). Tennessee does not meet 100% of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on funds available, is paid, except in the instances specified in subparagraph (e) below.
 - (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.
 - (e) Family Benefit Cap
 1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by Public Chapter 950 (1996), unless

- (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First;
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home;
or
 - (VI) when a Families First case is closed, through a deliberate action, without good cause, and the family reapplies within ninety (90) days.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
 3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt for an eighteen (18) month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.
- (f) An assistance payment is determined as follows:
1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
 2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.
- In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.
3. The minimum monthly grant which can be paid is ten dollars (\$10).
- (g) Families First Need/Payment Standards
1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	932	1312	1536	1585	1913	1931	2089	2102	2307	2316
Consolidated Need Standard	504	709	830	857	1034	1044	1129	1136	1247	1252
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2392	2455	2510	2559	2603	2640	2671	2701	2725	2745
Consolidated Need Standard	1293	1327	1357	1383	1407	1427	1444	1460	1473	1484
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	932	1312	1536	1585	1913	1931	2089	2102	2307	2316
Consolidated Need Standard	504	709	830	857	1034	1044	1129	1136	1247	1252
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2392	4559	2510	2559	2603	2640	2671	2701	2725	2745
Consolidated Need Standard	1293	1327	1357	1383	1407	1427	1444	1460	1473	1484
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 22.3% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 28.0% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2000-2001.

Authority: TCA §§ 4-5-201 et seq.; 4-5-209; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)- (g); Senate Bill 1914/House Bill 1943 (2001); 42 USCA §§ 601 et seq.; 45 CFR 233.20; 42 USCA § 1315.

The public necessity rules set out herein were properly filed in the Department of State on the 3rd day of July, 2001, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 16th day of September, 2001. (07-01)

**DEPARTMENT OF HUMAN SERVICES - 1240
ADULT AND FAMILY SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Senate Bill 1667/House Bill 1390 (2001), requires the Tennessee Department of Human Services to implement, by public necessity rules by the effective date of Senate Bill 1667/House Bill 1390 (2001) or as soon thereafter as possible, certain child care standards relative to new age ranges for certain age groups of children being cared for in child care centers licensed by the Department of Human Services.

It further provides that any other rules of the Department may be modified to make conforming amendments relative to those changes.

In addition, Acts 2001, ch. 436, Section 5 modifies the effective date of the adult:child ratios relative to the numbers of adults required to care for certain age groups of children. These ratios are based upon the age ranges of the age groups of children in the care of a child care center. Those conforming changes involving the adult:child ratios should, therefore, be made at the same time the changes in age ranges for the groups are made as required by Senate Bill 1667/House Bill 1390 in order ensure proper application, upon the new effective date for the adult:child ratios made by Acts 2001, ch. 436, Section 5 of the modified adult:child ratios to the modified age ranges made by Senate Bill 1667/House Bill 1390 (2001) and so that the public and industry will have notice of the effective date of the new ratios and the age ranges for the groups of children to whom they will apply.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS

Paragraph (26) of Rule 1240-4-3-.02, Definitions, is amended by deleting paragraph (26) in its entirety and by substituting instead the following new paragraph (26):

- (26) Toddler. A child who is twelve (12) months through thirty (30) months of age.

Parts 1-14 of subparagraph (e) of paragraph (4) of Rule 1240-4-3-.07, Staff, are amended by deleting parts 1-14 in their entireties and by substituting instead the following new parts 1-14, so that, as amended, parts 1-14 shall read as follows:

1. Through January 31, 2002, the age categories, group sizes and adult:child ratios described in the charts in parts 7 and 8 shall be required for the ages of children described in those charts and shall remain effective until superseded as described below.
2. Effective February 1, 2002:
 - (i) The age categories, group sizes and adult:child ratios described in the Single-Age Grouping and Adult:Child Ratio Chart in part 9 shall become effective and shall be required for “Infants: 6 weeks-15 months”; for “Toddlers: 12 months-30 months” and for “2 years: 24 months-35 months” and shall replace the “Infants: 6 weeks-15 months, “Toddlers (12 months-30 months)” and the “2 years (24 months-35 months)” age groups described in the chart in part 7.
 - (ii) The age categories, group size and adult:child ratio described in the Multi-Age Grouping and Adult:Child Ratio Chart in part 10 shall become effective and shall be required for “Infants/Toddlers: 6 wks.-30 months” and shall replace the “Infant/Toddler: 6 wks.-30 months” age group described in the chart in part 8.
 - (iii) The age categories, group sizes and adult:child ratios for the remaining age groups in parts 7 and 8 that are not modified by parts 9 and 10 shall remain effective until superseded as described below.
3. Effective July 1, 2002:
 - (i) The age categories, group sizes and adult:child ratios described in the Single-Age Grouping and Adult:Child Ratio Chart in part 11 shall become effective and shall be required for the “Infants: 6 weeks-15 months”; for “Toddlers: 12 months-30 months”; for “2 years: 24 months-35 months” and for “3 years” age groups, and shall replace the “Infants: 6 wks.-15 months”, “Toddlers 12 months-30 months” and “2 years: 24-month-35 months” age groups in part 7 and the “Infants: 6 weeks-15 months”; for “Toddlers: 12 months-30 months” and “2 years: 24 months-35 months” groups described in the chart in part 9.
 - (ii) The age categories, group sizes and adult:child ratios described in the Multi-Age Grouping and Adult:Child Ratio Chart in part 12 shall become effective and shall be required for the “Infants/Toddlers: 6 weeks-30 months”, “2-4 years” and for “2½-3 years: 30-47 months”, and shall replace the “Infant/Toddler: 6 weeks-30 months”, “2-3 years: 24 months-47 months”, “2-4 years” and “2½-3 years: 30- 47 months” age groups described in the charts in part 8 and the “Infants/Toddlers: 6 weeks-30 months” age group in part 10.
 - (iii) The age categories, group sizes and the adult:child ratios for the remaining age groups in parts 7 and 8 that are not modified by parts 9-12 shall remain effective until superseded as described below.
4. Effective July 1, 2003, the age categories, group sizes and adult:child ratios in the charts in parts 13 and 14 shall become effective and shall supersede all of the age categories, group sizes and adult:child ratios established in the charts previously established or modified in parts 7-12.
5. Groups shall comply with the definitions in 1240-4-3-.02.

9. Single Age Grouping and Adult:Child Ratio Chart (Effective on February 1, 2002 as described in part 2 above):

	Maximum Group Size and Adult:Child Ratios			
Single-Age Grouping	8	12	14	
Infants: 6 wks.-15 mos.	1:4			
Toddlers: 12 mos.-30 mos.		1:6		
2 years:24 mos.-35 mos.			1:7	

10. Multi-Age Grouping and Adult:Child Ratio Chart (Effective on February 1, 2002 as described in part 2 above):

	Maximum Group Size and Adult:Child Ratios			
Multi-Age Grouping	10			
Infants/Toddlers: 6 wks.-30 mos.	1:5			

11. Single Age Grouping and Adult:Child Ratio Chart (Effective on July 1, 2002 as described in part 3 above):

	Maximum Group Size and Adult:Child Ratios					
Single-Age Grouping	8	12	14	18	20	No Maximum
Infants: 6 wks.-15mos.	1:4					
Toddlers: 12-30 mos.		1:6				
2 years: 24mos.-35mos.			1:7			
3 years				1:9		

12. Multi-Age Grouping and Adult:Child Ratio Charts (Effective on July 1, 2002 as described in part 3 above):

	Maximum Group Size and Adult:Child Ratios						
Multi-Age Grouping	10	16	18	20	22	24	No maximum
Infants/ Toddlers:6 wks.-30 mos.	1:5						
2-4 years		1:8					
2 1/2-3 years: 30-47 mos.			1:9				

13. Single-Age Grouping and Adult: Child Ratio Chart (Effective on July 1, 2003 as described in Part 4 above).

	Maximum Group Size and Adult:Child Ratios					
Single-Age Grouping	8	12	14	18	20	No Maximum
Infants:6 wks.-15 mos.	1:4					
Toddlers:12 mos.-30 mos.		1:6				
2 years:24- 35 mos.			1:7			
3 years				1:9		
4 years					1:13	
5 years					1:16	
School-Age (K and above)						1:20

14. Multi-Age Grouping and Adult:Child Ratio Charts (Effective on July 1, 2003 as described in part 4 above.

Multi-Age Grouping	Maximum Group Size and Adult:Child Ratios						
	10	16	18	20	22	24	No Maximum
Infants/ Toddlers: 6 wks.-30 mos.	1:5						
2-4 years		1:8					
2 1/2-3 years: 30-47 mos.			1:9				
2 1/2-5 years				1:11			
2 1/2 - 12 years	1:10						
3-5 years (includes 3- 4 year olds)					1:13		
4-5 years						1:16	
5-12 years							1:20

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-209; 71-3-502(a)(2); Acts 2001, ch. 436, Section 5; Senate Bill 1667/House Bill 1390 (2001), Section 25.

Paragraph (1) of Appendix D, of Rule 1240-4-3-.14, Appendices, is amended by deleting the language “(0-30 months)” in the first line, and by substituting instead the language “(6 weeks-30 months)”, so that, as amended, Paragraph (1) shall read:

- (1) Recommended Toys and Equipment for Infants and Toddlers (6 weeks-30 months).

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-209; 71-3-502(a)(2); Acts 2001, ch. 436, Section 5; Senate Bill 1667/House Bill 1390 (2001), Section 25.

The public necessity rules set out herein were properly filed in the Department of State on the 19th day of July, 2001, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 31st day of December, 2001, (07-15)

**DEPARTMENT OF HUMAN SERVICES - 1240
ADULT AND FAMILY SERVICES DIVISION**

CHAPTER 1240-4-6

LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Senate Bill 1667/House Bill 1390 (2001), requires the Tennessee Department of Human Services to implement, by public necessity rules by the effective date of Senate Bill 1667/House Bill 1390 (2001) or as soon thereafter as possible, certain child care standards relative to new age ranges for certain age groups of children being cared for in child care centers licensed by the Department of Human Services.

It further provides that any other rules of the Department may be modified to make conforming amendments relative to those changes.

In addition, Acts 2001, ch. 436, Section 5 modifies the effective date of the adult:child ratios relative to the numbers of adults required to care for certain age groups of children. These ratios are based upon the age ranges of the age groups of children in the care of a child care center. Those conforming changes involving the adult:child ratios should, therefore, be made at the same time the changes in age ranges for the groups are made as required by Senate Bill 1667/House Bill 1390 in order ensure proper application, upon the new effective date for the adult:child ratios made by Acts 2001, ch. 436, Section 5, of the modified adult:child ratios to the modified age ranges made by Senate Bill 1667/House Bill 1390 (2001) and so that the public and industry will have notice of the effective date of the new ratios and the age ranges for the groups of children to whom they will apply.

For a complete copy of these public necessity rules, contact William B. Russell, General Counsel, Tennessee Department of Human Services, 15th Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Paragraph (25) of Rule 1240-4-6-.02, Definitions, is amended by deleting paragraph (25) in its entirety and by substituting instead the following new paragraph (25):

(25) Toddler. A child who is twelve (12) months through thirty (30) months of age.

Rule 1240-4-6-.02, Definitions, is amended by adding the following new paragraph (17), so that, as amended, new paragraph (17) shall read as follows, and further amend Rule 1240-4-6-.02, Definitions, by re-numbering existing paragraphs accordingly after adding the new paragraph (17):

(17) Infant. A child who is six (6) weeks through fifteen (15) months of age.

Authority: *T.C.A. §§ 4-5-201 et seq.; 4-5-209; 71-3-502(a)(2); Acts 2001, ch. 436, Section 5; Senate Bill 1667/House Bill 1390 (2001), Section 25.*

The public necessity rules set out herein were properly filed in the Department of State on the 19th day of July, 2001, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 31st day of December, 2001. (07-14)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 BUREAU OF HEALTH SERVICES ADMINISTRATION DIVISION OF GENERAL ENVIRONMENTAL HEALTH

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Food Service Establishment Rules, pursuant to Tennessee Code Annotated, Section 68-14-303. 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, Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 9:00 A.M. on the 17th day of September, 2001.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: Richard E. Cochran, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-1-5 ORGANIZED CAMPS

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1200-1-5-.01 DEFINITIONS

- (1) "Commissioner" means the Commissioner of the Department of Health or the Commissioner's authorized representative.
- (2) "Critical item" means an aspect of operation or condition of facilities or equipment which, if in violation, constitutes the greatest hazard to health and safety.
- (3) "Day Camp" means an organized camp program that campers attend for an established period of time, returning to their homes at night, and which provides creative, recreational and educational opportunities in the out-of-doors.
- (4) "Department" means the Department of Health.

- (5) “Extensively remodeled” means alteration to change bed or sleeping capacity; or the increase or decrease of floor space
- (6) “Imminent health hazard” means any condition, deficiency, or practice which, if not corrected, is very likely to result in illness, injury, or loss of life.
- (7) “Motor home” means any motorized vehicle designed as a temporary dwelling for travel, recreational, or vacation use.
- (8) “Natural swimming area” means a portion of a river, lake, reservoir, creek, pond, or stream used for swimming within the organized camp.
- (9) “Organized camp” means an area, place, parcel or tract of land on which facilities are established or maintained to provide an outdoor group-living experience for children or adults, or where one (1) or more permanent or semi-permanent structures are established or maintained as living or sleeping quarters for children or adults, and operated for educational, social, recreational, religious instruction or activity, physical education or health, or vacation purposes either gratuitously or for compensation; provided, however, that this definition is not intended to include
 - (a) a hunting, fishing or other camp privately owned and used exclusively for the personal pleasure of the owner and the owner’s guests;
 - (b) a camp site on property owned by a church and used exclusively for the personal benefit of the members of the church and such members’ guests, if:
 - 1. no permanent or semi-permanent structures or buildings are established or maintained on the camp site as living or sleeping quarters, restrooms, or for a cafeteria or kitchen, to provide an outdoor group-living experience for children or adults;
 - 2. the camp site is used for occasional weekend or overnight camping experiences for such persons; and
 - 3. the camp site contains no electrical, sewage, or water hookups or pads to accommodate travel trailers, truck coaches or campers, tent campers, and other similar camping vehicles.
 - (c) permanent structures used for sleeping quarters that are less than thirty (30) feet apart or where individual units are less than thirty (30) feet apart; or
 - (d) sleeping quarters where items such as sheets, towels, and pillows are furnished to guests, including, but not limited to, cabins, bunkhouses, cottages, but not including lodges, dormitories, multifamily dwellings, tents, and trailers.
- (10) “Owner/Operator” means the applicant, permittee, or other person to be in charge of facilities.
- (11) “Permanent structure” means a building and appurtenances at a fixed location maintained for living, sleeping, educational, social, recreational, religious instruction, physical education, health, or vacation purposes.
- (12) “Person” means any and all persons, including an individual, firm, association, municipal or private corporation, state, municipality, commission, political subdivision of a state, interstate body, governmental agency of this state and department, agency, or instrumentality of the branches of the federal government.
- (13) “Primitive camp” means an organized camp established for tent camping only.

- (14) "Public health officer" means the director of a city, county, or district health department having jurisdiction over the community health in a specific area, or the officer's authorized representative.
- (15) "Resident camp" means one or more permanent or semi-permanent structures maintained for living, sleeping, educational, social, recreational, religious instruction, physical education, health, or vacation purposes.
- (16) "Semi-permanent structure" means any temporary or portable facility maintained for living, sleeping, educational, social, recreational, religious instruction, physical education, health, or vacation purposes.
- (17) "State Fire Marshal's Office" means the Department of Commerce and Insurance, Division of Fire Prevention.
- (18) "Tent camper" means a towed vehicle constructed so that the sides or top may be extended when parked and retracted while towed and designed as a temporary dwelling for travel, recreational, or vacation use.
- (19) "Travel camp" means one or more sites for motor homes, travel trailers, truck campers, tent campers, or tents.
- (20) "Travel camp sites" means designated camping spaces which are equipped with utility hookups.
- (21) "Travel trailer" means a towed vehicle designed as a temporary dwelling for travel, recreational, or vacation use.
- (22) "Truck camper" means a portable structure without a chassis or wheels and built for transport by truck and designed as a temporary dwelling for travel, recreational, or vacation use.

Authority: *T.C.A. Sections 4-5-202, 68-110-101, and 68-110-102.*

1200-1-5-.02 PERMITTING AND INSPECTION

- (1) A person planning to construct, operate, or change ownership of an organized camp shall submit a written permit application with proper fee to the Commissioner. Construction or alteration of an organized camp shall require approval of plans which shall show:
 - (a) area and dimensions of the site to a scale of not less than 1" = 100';
 - (b) property lines;
 - (c) number, location, and dimensions of all camping spaces;
 - (d) number, size, type, and location of all permanent and semi-permanent structures;
 - (e) location of water supply and sewage disposal;
 - (f) location and width of roads; and
 - (g) number, location, and type of acceptable fire fighting equipment.
- (2) Application Procedures
 - (a) A person planning to operate an organized camp must obtain a written application for a permit on a form provided by the Commissioner through the local county health department prior to operating an organized camp.

- (b) A new or initial application for a permit is required for an organized camp that has not previously not been permitted or for instances when ownership changes.
 - (c) For the purposes of determining a change of ownership of an organized camp, a “person” shall include a change of ownership of the organized camp by a corporation (e.g., Corporation A sells its organized camp to Corporation B) or a change of ownership of a corporation which owns an organized camp. If there is no change in the federal tax identification number applicable to the corporation which owns the organized camp, there is no change of ownership for permit purposes.
 - (d) The Commissioner shall issue an organized camp permit
 - 1. upon receiving a completed application with applicable fees; and
 - 2. after an inspection of the proposed facility reveals that the facility is in compliance with requirements of these rules.
- (3) Inspection Procedures
- (a) The Commissioner shall inspect or cause to be inspected every organized camp at least once every six (6) months and as often as deemed necessary by the Commissioner.
 - (b) Inspection results for organized camps shall be recorded on standard departmental forms which summarize the requirements of the law and rules.
 - (c) The scoring system shall include a weighted point value for each requirement in which critical items are assigned values of either four (4) or five (5) points, with non-critical items having assigned values of either one (1) or two (2) points.
 - (d) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).
- (4) The organized camp shall be accessible for inspection and not be subject to flooding during the camping season.
- (5) Critical item violations shall be corrected within ten (10) calendar days from the date of the inspection.
- (6) Upon declaration of an imminent health hazard by the Commissioner, the facility shall immediately cease operations until authorized to reopen. The inspection report shall state that failure to comply with any time limits for correction may result in suspension of permit. An opportunity for a hearing concerning the inspection and/or inspection report and/or on the ordered corrective action will be provided, if written request is filed with the Commissioner within ten (10) calendar days following the inspection. If a request for a hearing is received, a hearing shall be held within a reasonable period of time after receipt of the request.
- (7) The Commissioner shall suspend an organized camp permit, if the Commissioner has reasonable cause to believe that the permittee is not in compliance with the provisions of this part; provided, however, the permittee shall be given the opportunity to correct violations as provided in Rule 1200-1-5-.02(5). The Commissioner may provide a notice of suspension on the regular inspection report or by letter. A written request for a hearing on a suspension must be filed by the permittee within ten (10) days of receipt of notice. If a hearing is requested, it shall be held within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and not subject to review. When a permit suspension is effective, all operations must cease. The Commissioner may end the suspension at any time, if reasons for suspension no longer exist in the opinion of the Commissioner.

(8) Permit Revocation

- (a) After providing an opportunity for a hearing, the Commissioner or his duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the Commissioner in the performance of the Commissioner's duty.
- (b) Prior to revocation, the Commissioner shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked. The permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the Commissioner within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.
- (c) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on re-inspection that conditions responsible for the order to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time. A notice provided for in this part is properly served when it is hand delivered to the permittee or person in charge, or alternatively, five (5) days from the mailing, by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the Commissioner.

Authority: T.C.A. Sections 4-5-202, 68-110-102, 68-110-103, 68-110-104, 68-110-105, and 68-110-106.

1200-1-5-.03 FACILITIES AND GROUNDS

- (1) Motor homes, travel trailers, truck campers, tent campers, and tents shall be located fifteen feet or more apart in clearly marked spaces.
- (2) The campgrounds shall be free of refuse and debris. Dogs, cats, and other domestic animals shall be leashed, confined, and/or otherwise under control at all times.
- (3) Permanent and semi-permanent structures shall be clean and maintained in good repair and provided with adequate lighting.
- (4) The organized camp operator shall keep a register for a period of one (1) year at the organized camp facility. Such register shall contain each camper's name, address, telephone number, and camping dates.
- (5) Fire Safety
 - (a) Fire Extinguishers
 - 1. Portable fire extinguishers shall be provided in hazardous areas, including storage rooms, laundry, linen, and gas-fired equipment rooms.
 - 2. Fire extinguishers shall be of a type approved and by the State Fire Marshal's office and installed, operated, and maintained in accordance with State Fire Marshal's Office law and rules.
 - 3. No soda-acid types of extinguishers are to be used.
 - (b) Smoke Detectors and Fire Alarms
 - 1. All sleeping rooms and sleeping areas shall be provided with a single station smoke detector. Smoke

detectors shall be of a type approved by the State Fire Marshal's Office or local jurisdiction and shall be installed, operated, and maintained in accordance with State Fire Marshal's Office law and rules. Single station smoke detection shall not be required when sleeping rooms contain smoke detectors connected to a central alarm system which also alarms locally.

2. A fire alarm system of a type approved by the State Fire Marshal's Office shall be installed, operated, and maintained in accordance with State Fire Marshal's Office law and rules in organized camps having more than fifteen (15) guest rooms, with exceptions being organized camps
 - (i) with all individual guest rooms having a direct exit to the outside or
 - (ii) buildings three (3) stories or less with each guest room having two (2) or more directions to exit from the entrance door of the room.
3. Travel and resident camps shall provide a telephone at the office or an in an area which is accessible at all times for the immediate notification of the public fire department or private fire brigade in case of fire and to access emergency health services.

(c) Electrical Hazards, Heating, and Flammable

1. Visible and/or obvious fire and electrical hazards are prohibited.
2. There shall be no storage of flammables, lawnmowers, gas powered weed eaters, or other similar flammable operated equipment in boiler or electrical panel rooms. Separate secured storage areas shall be provided for plainly marked flammables, explosives, and hazardous chemicals.
3. Flammable liquids shall be stored in a well ventilated, separate building, away from guest sleeping rooms, which is constructed and rated for storage of flammables in accordance with State Fire Marshal's Office law and rules, and shall be clearly marked
4. Draperies, curtains, and other similar loosely hanging furnishings and decorations shall be flame resistant.
5. Furnishings or decorations of an explosive or highly flammable character shall not be used.

(d) Exits and Evacuation Plans

1. Each guest room door that opens into an interior corridor shall be self-closing.
2. Exits shall be clear of obstructions, marked, lighted, and maintained at all times.
3. Stairways shall be open and free of obstructions at all times.
4. A floor diagram reflecting the actual floor arrangement, exit locations, and room identifications shall be posted in a location and in an acceptable manner on or immediately adjacent to every guest room door.

(6) Permanent sleeping quarters shall conform to the following.

- (a) Each shall have adequate ventilation, and there shall be at least three (3) feet between sides of each bed and adequate space to provide movement between beds.
- (b) Articles of bedding shall be clean and in good repair.

- (c) Permanent sleeping quarters shall have a minimum of forty (40) square feet per person floor space.
 - (d) Waterproof mattresses or mattress covers shall be provided.
 - (e) Each stacked bunk bed shall have a guardrail. The lower edge of the guardrail and the top surface of the mattress shall close the space between the lower edge of the guardrail and the upper edge of the bedframe to 3½ inches or less.
 - (f) Children of less than six (6) years of age shall not be allowed on the upper bunks.
- (7) Storage area(s) for luggage and personal effects shall be provided in resident camps.
 - (8) A first aid kit for minor injuries shall be provided at the office or an area which is open or accessible at all times.
 - (9) Natural swimming areas shall have no drop-offs, potholes, rock outcroppings, stumps, other obstacles, heavy vegetative growth or pollution. Depths and boundaries shall be conspicuously marked and lifesaving equipment, as required for public swimming pools, shall be available.
 - (9) Each organized camp shall be provided with adequate restroom and/or bathing facilities. The ratio of water closets, urinals, lavatories, and showers in bathhouses and restrooms shall be in compliance with applicable local and/or state building and plumbing codes. Toilet tissue and covered, fire-resistant waste containers shall be provided.
 - (a) In the absence of applicable building or plumbing codes, fixtures shall be provided in the following ratios.

# Spaces or Sites	Water Closets		Urinals	Lavatories		Showers	
	Men	Women		Men	Women	Men	Women
1-15	1	1	0	1	1	1	1
16-30	1	2	1	2	2	1	1
31-45	2	2	1	3	3	1	1
46-60	2	3	2	3	3	2	2
61-80	3	4	2	4	4	2	2
81-100	4	5	2	4	4	3	3

- 1. In the absence of urinals, the ratio of water closets for men and women shall be the same.
 - 2. There shall be one (1) additional water closet and lavatory per gender for each additional twenty-five (25) camp spaces/sites and one (1) additional shower per gender for each additional forty (40) spaces/sites.
- (b) In the absence of applicable building or plumbing codes, the ratio of water closets, lavatories, urinals, bathing facilities, and other fixtures for occupants of organized resident camps shall be as follows. The table identifies the number of individuals or persons per facility.

Water Closets		Urinals	Lavatories		Showers	
Men	Women		Men	Women	Men	Women
1/12	1/10	*	1/12	1/12	1/12	1/12

*In the absence of urinals, ratio of water closets for men and women shall be the same.(5)

- (c) There shall be one (1) drinking fountain for every seventy-two (72) persons at resident camps.
- (d) Service buildings with toilet, bathing, and lavatory facilities shall be provided for motor homes, travel trailers, truck campers, and tent campers which do not have sewage holding tanks.
- (e) Primitive camps and camps offering services to recreational or similar vehicles (e.g., motor homes and travel trailers) with sewage holding tanks are exempt from the restroom and/or bathing facility requirements.

Authority: T.C.A. Sections 4-5-202 and 68-110-102.

1200-1-5-.04 WATER SUPPLY, SEWAGE AND SOLID WASTE DISPOSAL

- (1) Water supply and sewage disposal systems shall be provided from a source constructed and operated according to law. The potable water system shall be installed to preclude the possibility of backflow. Primitive camps shall not be required to have water. Ice shall be from an approved source and protected from contamination.
- (2) Durable, easily cleanable, and enclosed portable drinking water containers shall be maintained in a sanitary condition. Common use of cups or dippers is prohibited.
- (3) Sanitary stations with a covered sewage disposal inlet surrounded by a concrete apron sloped inward to the drain with wash down facilities or capped, four-inch, above-ground sewer connections shall be provided for motor homes, travel trailers, truck campers, and tent campers with sewage holding tanks.
- (4) All garbage and refuse shall be disposed of according to applicable laws or ordinances.
- (5) An adequate number of clean, covered, garbage and refuse containers in good repair shall be provided. Tied plastic bags are acceptable if removed daily.
- (6) Submission of plans and specifications.
 - (a) No person shall commence construction, extensive remodeling or conversion, within an organized camp, of any permanent structure which is two or more stories in height consisting of twelve or more units until plans or specifications therefor have been submitted to and approved in writing by the State Fire Marshal's Office or other authority having jurisdiction in accordance with applicable law and rules.
 - (b) No person shall commence construction, extensive remodeling or conversion, within an organized camp, of any place of assembly having a capacity of three hundred (300) or more persons until plans and specifications therefor have been submitted to and approved in writing by the State Fire Marshal's Office or other authority having jurisdiction in accordance with applicable law and rules.

- (c) Except as specified in paragraphs (a) and (b), no person shall commence construction, extensive remodeling or conversion, within an organized camp, of any permanent structure until plans and specification therefor have been submitted to and approved in writing by the Commissioner.
- (d) Plans and specifications shall indicate the proposed layout arrangement, mechanical plans, construction materials, work areas, and the type and model of proposed fixed equipment and facilities.
- (e) Regardless of which authority reviews the plans and specifications, all structures within an organized camp shall be designed and constructed in compliance with all applicable state and local building and fire codes.

Authority: T.C.A. Sections 4-5-202 and 68-110-102.

1200-1-5-.05 GENERAL PROVISIONS

- (1) Posting of Permit. T.C.A. 68-110-103(d) requires the display or posting of permits “in a conspicuous manner.” This shall mean at a place so designated by the inspector at the time of inspection. No person except an authorized representative of the Commissioner shall modify, remove, cover up, or otherwise make the permit less conspicuous in any way.
- (2) Loss of Permit Document. Any organized camp establishment or operator who loses, misplaces, or destroys the permit or license shall, as soon as the fact becomes apparent, immediately apply for a duplicate. The fee for the duplicate permit shall be three dollars (\$3.00). This fee shall accompany the application for such duplicate.
- (3) Penalties. Any person who violates the provisions of these rules or fails to perform the reasonable requirements of such, after receipt of ten (10) days’ written notice, may be subject to fines of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each offense. Each day of continued violation, upon a finding of fault in a court of law, constitutes a separate offense. These violations shall include, but not limited to:
 - (a) operating under a suspended permit;
 - (b) operating without a permit;
 - (c) failure to allow an inspection; or
 - (d) failure to post permit.
- (4) Waiver. With the exception of required compliance with applicable building and fire codes, one or more of these regulations may be waived in whole or part when, in the opinion of the Commissioner, there are factors or circumstances which render compliance with such regulations unnecessary, provided that such waiver shall not constitute a health or safety hazard as determined by the Commissioner, and provided that such regulations waiver shall be in writing by the Commissioner. A request for waiver of one or more of these regulations shall be in writing to the Commissioner.
- (5) Any organized camp permitted at the effective time of these rules shall have one (1) year from the effective date of these rules to comply with any construction items.

Authority: T.C.A. Sections 4-5-202, 68-110-101, and 68-110-102.

REPEALS

Rule 1200-1-5 Organized Camps is repealed.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-22)

**DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Food Service Establishment Rules, pursuant to Tennessee Code Annotated, Section 68-14-303. 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, Ground Floor of the Cordell Hull Building located at 425 5th Avenue, North, Nashville, Tennessee at 9:00 A.M. on the 17th day of September, 2001.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: Richard E. Cochran, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-23-1
FOOD SERVICE ESTABLISHMENT**

Rule 1200-23-1-.01 Definitions is amended by adding a new definition (2) and subsequently renumbering all other definitions. The definition shall read:

- (2) "Auxiliary food service operation" shall mean a designated area located within or adjacent to a food service establishment sharing common ownership and/or management and whose primary purpose is serving beverages. For determining the amount of the permit fee for the food service establishment associated with the auxiliary foodservice operation, all seating in the auxiliary food service operation shall be included in the seating count of the primary food service establishment.

Rule 1200-23-1-.02(11)(g) Food Sanitation is amended in its entirety, so that the amended paragraph shall read:

(11) Construction and Maintenance of Physical Facilities

(g) Poisonous or Toxic Materials

1. Material permitted. There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.
2. Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled easy identification of contents.
3. Storage of materials.
 - (i) Poisonous or toxic materials consist of the following categories:
 - (I) insecticides and rodenticides
 - (II) caustics, acids, polishes, and other chemicals, detergents, sanitizers, and related cleaning or drying agents.
 - (ii) Each of the two categories set forth in paragraph 1200-23-1-.02(11)(g)(3)(i) shall be stored and physically located separate from each other.
 - (iii) All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose.
 - (iv) To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.
4. Use of materials.
 - (i) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
 - (ii) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.
5. Personal Care Items. Personal care items are items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines, first-aid supplies, and other items such as cosmetics, and toiletries such as toothpaste and mouthwash. Personal care items shall be labeled and stored in a way that prevents them from contaminating food and food-contact surfaces.

Authority: T.C.A. 4-5-202 and 68-14-301 et seq.

Rule 1200-23-1-.03(3)(d) Establishment Permitting and Inspection System is amended in its entirety, so that the amended paragraph shall read:

1. The inspection report shall state that failure to comply with any time limits specified by the Commissioner for correction may result in cessation of operation.
2. The citation of a violation of a non-critical item may be appealed, upon receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the non-critical item(s) being appealed. The final determination on the appeal shall be made by the Director or the Director's Designee in writing and within a reasonable time after receipt of the request for an appeal.
3. The citation of a violation of a critical item may also be appealed upon the receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the critical item(s) being appealed. The decision of the Director shall be final and made in writing within a reasonable time of the request for an appeal.
4. In the event of an order of cessation of operation or revocation based upon the appealed critical item(s), a request for a hearing may be made in writing to the Commissioner postmarked or received within ten (10) calendar days of the decision of the Director. Except as otherwise provided by law, no action shall be taken regarding a closure or revocation on the critical item(s) under appeal or subject to a hearing pending the outcome of the hearing which shall be held pursuant to the Uniform Administrative Procedures Act.

Authority: T.C.A. 4-5-202 and 68-14-301 et seq.

Rule 1200-23-1-.04 Fees is amended in its entirety, so that the amended paragraph shall read:

1200-23-1-.04 FEES

- (1) Fees shall be as provided by statute.

1200-23-1-.07 Change of Ownership is added to the rules and shall read:

- (1) For the purposes of determining a change of ownership of a food service establishment, a "person" shall include a change of ownership of the food service establishment by a corporation (e.g., Corporation A sells its food service establishment to Corporation B) or a change of ownership of a corporation which owns a food service establishment. If there is no change in the federal tax identification number of the corporation which originally owned the food service establishment, there is no change of ownership for permit purposes.

Authority: T.C.A. 4-5-202 and 68-14-301 et seq.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-26)

**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 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 Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 24th day of September, 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-.01, Definitions, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

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

Rule 1200-6-1-.09, Renewal of License, is amended by deleting subparagraphs (1) (b), (1) (e) and (1) (f), paragraph (2) but not all its subparagraphs, and subparagraph (2) (a) but not its parts, and substituting instead the following language, and is further amended by deleting subparagraph (1) (g) in its entirety, so that as amended, the new subparagraphs (1) (b), (1) (e) and (1) (f), paragraph (2) but not all its subparagraphs, and subparagraph (2) (a) but not its parts, shall read:

- (1) (b) For licensees who have not renewed their license online via the Internet, a renewal application form will be mailed to each licensee 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.
- (1) (e) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (1) (f) For persons licensed under national certification requirements as provided in Rules 1200-6-1-.20, 1200-6-1-.22, or 1200-6-1-.24, proof of current national certification must be submitted, if requested by the Board, with the renewal application.
- (2) Reinstatement of an Expired License
 - (2) (a) Licenses that have expired may be reinstated upon meeting the following conditions:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 68-29-105, 68-29-119, and 68-29-129.

Rule 1200-6-1-.20, Qualifications and Duties of the Medical Laboratory Director, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead following language, and is further amended by adding the following language as new subparagraph (2) (d) and renumbering the remaining subparagraph accordingly, so that as amended, the new subparagraphs (2) (c) and (2) (d) shall read:

- (2) (c) The laboratory director must be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed. The director shall make periodic on-site visits at a minimum of once per month.
- (2) (d) The laboratory director must not direct more than three (3) clinical labs without an exemption from the Board. Collection stations are not considered clinical laboratories.

Authority: T.C.A. §§ 4-5-202, 4-5-204; 68-29-105, 68-29-111, and 68-29-116.

Rule 1200-6-3-.13, Personnel Requirements for a Medical Laboratory, is amended by adding the following language as new paragraph (6):

- (6) The medical laboratory director shall make periodic on-site visits at a minimum of once per month.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-29)

**DEPARTMENT OF HUMAN SERVICES - 1240
CHILD SUPPORT DIVISION**

CHAPTER 1240-2-3

CHILD SUPPORT PROCESSING FEES

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to the Department's rules pursuant to TCA §§ 4-5-201 et seq. and 71-3-501 et seq. The hearings 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 Second Floor Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248 at 1:30 PM Central Daylight Time on Tuesday, September 25, 2001.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Doris Batey, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: Barbara Broersma, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Chapter 1240-2-3, Miscellaneous IV-D, is amended by adding the following new Section, so that, as amended, the new Section shall read:

1240-2-3-.03 CHILD SUPPORT PROCESSING FEE

Pursuant to T.C.A. §8-21-403 and §36-5-116, the Department of Human Services sets the fee paid by the obligor for the collection and distribution of child support through the central system at zero percent (0%). This fee reduction and new amount shall become effective upon implementation of this Rule. This Rule shall have no effect on the child support processing fee paid by the obligor for the collection and distribution of child support through the court clerk.

Authority: TCA §§4-5-202; 8-21-403; 36-5-116; 42 USC §§ 666.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-34)

**DEPARTMENT OF HUMAN SERVICES - 1240
ADULT AND FAMILY SERVICES DIVISION**

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to the Department's rules pursuant to TCA §§ 4-5-201 et seq. and 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30 PM Central Daylight Time on Wednesday, September 19, 2001; in the Second Floor Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Daylight Time on Monday, September 24, 2001; and in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Daylight Time on Wednesday, September 26, 2001.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Doris Batey, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-4-3

LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS

Paragraph (26) of Rule 1240-4-3-.02, Definitions, is amended by deleting paragraph (26) in its entirety and by substituting instead the following new paragraph (26):

(26) Toddler. A child who is twelve (12) months through thirty (30) months of age.

Parts 1-14 of subparagraph (e) of paragraph (4) of Rule 1240-4-3-.07, Staff, are amended by deleting parts 1-14 in their entireties and by substituting instead the following new parts 1-14, so that, as amended, parts 1-14 shall read as follows:

1. Through January 31, 2002, the age categories, group sizes and adult:child ratios described in the charts in parts 7 and 8 shall be required for the ages of children described in those charts and shall remain effective until superseded as described below.
2. Effective February 1, 2002:
 - (i) The age categories, group sizes and adult:child ratios described in the Single-Age Grouping and Adult:Child Ratio Chart in part 9 shall become effective and shall be required for "Infants: 6 weeks-15 months"; for "Toddlers: 12 months-30 months" and for "2 years: 24 months-35

months” and shall replace the “Infants: 6 weeks-15 months, “Toddlers (12 months-30 months)” and the “2 years (24 months-35 months)” age groups described in the chart in part 7.

- (ii) The age categories, group size and adult:child ratio described in the Multi-Age Grouping and Adult:Child Ratio Chart in part 10 shall become effective and shall be required for “Infants/Toddlers: 6 wks.-30 months” and shall replace the “Infant/Toddler: 6 wks.-30 months” age group described in the chart in part 8.
 - (iii) The age categories, group sizes and adult:child ratios for the remaining age groups in parts 7 and 8 that are not modified by parts 9 and 10 shall remain effective until superseded as described below.
3. Effective July 1, 2002:
- (i) The age categories, group sizes and adult:child ratios described in the Single-Age Grouping and Adult:Child Ratio Chart in part 11 shall become effective and shall be required for the “Infants: 6 weeks-15 months”; for “Toddlers: 12 months-30 months”; for “2 years: 24 months-35 months” and for “3 years” age groups, and shall replace the “Infants: 6 wks.-15 months”, “Toddlers 12 months-30 months” and “2 years: 24-month-35 months” age groups in part 7 and the “Infants: 6 weeks-15 months”; for “Toddlers: 12 months-30 months” and “2 years: 24 months-35 months” groups described in the chart in part 9.
 - (ii) The age categories, group sizes and adult:child ratios described in the Multi-Age Grouping and Adult:Child Ratio Chart in part 12 shall become effective and shall be required for the “Infants/Toddlers: 6 weeks-30 months”, “2-4 years” and for “2 ½-3 years: 30-47 months”, and shall replace the “Infant/Toddler: 6 weeks-30 months”, “2-3 years: 24 months-47 months”, “2-4 years” and “2 ½-3 years: 30- 47 months” age groups described in the charts in part 8 and the “Infants/Toddlers: 6 weeks-30 months” age group in part 10.
 - (iii) The age categories, group sizes and the adult:child ratios for the remaining age groups in parts 7 and 8 that are not modified by parts 9-12 shall remain effective until superseded as described below.
4. Effective July 1, 2003, the age categories, group sizes and adult:child ratios in the charts in parts 13 and 14 shall become effective and shall supersede all of the age categories, group sizes and adult:child ratios established in the charts previously established or modified in parts 7-12.
5. Groups shall comply with the definitions in 1240-4-3-.02.
6. The adult:child ratios in this subparagraph are required to be provided by the child care agency while the children are indoors and on the playground.
7. Single Age Grouping and Adult:Child Ratio Chart:

9. Single Age Grouping and Adult:Child Ratio Chart (Effective on February 1, 2002 as described in part 2 above):

	Maximum Group Size and Adult:Child Ratios			
Single-Age Grouping	8	12	14	
Infants: 6 wks.-15 mos.	1:4			
Toddlers: 12 mos.-30 mos.		1:6		
2 years:24 mos.-35 mos.			1:7	

10. Multi-Age Grouping and Adult:Child Ratio Chart (Effective on February 1, 2002 as described in part 2 above):

	Maximum Group Size and Adult:Child Ratios			
Multi-Age Grouping	10			
Infants/Toddlers: 6 wks.-30 mos.	1:5			

11. Single Age Grouping and Adult:Child Ratio Chart (Effective on July 1, 2002 as described in part 3 above):

	Maximum Group Size and Adult:Child Ratios					
Single-Age Grouping	8	12	14	18	20	No Maximum
Infants: 6 wks.-15mos.	1:4					
Toddlers: 12-30 mos.		1:6				
2 years: 24mos.-35mos.			1:7			
3 years				1:9		

12. Multi-Age Grouping and Adult:Child Ratio Charts (Effective on July 1, 2002 as described in part 3 above):

	Maximum Group Size and Adult:Child Ratios						
Multi-Age Grouping	10	16	18	20	22	24	No maximum
Infants/ Toddlers:6 wks.-30 mos.	1:5						
2-4 years		1:8					
2 1/2-3 years: 30-47 mos.			1:9				

13. Single-Age Grouping and Adult: Child Ratio Chart (Effective on July 1, 2003 as described in Part 4 above).

	Maximum Group Size and Adult:Child Ratios					
Single-Age Grouping	8	12	14	18	20	No Maximum
Infants:6 wks.-15 mos.	1:4					
Toddlers:12 mos.-30 mos.		1:6				
2 years:24- 35 mos.			1:7			
3 years				1:9		
4 years					1:13	
5 years					1:16	
School-Age (K and above)						1:20

14. Multi-Age Grouping and Adult:Child Ratio Charts (Effective on July 1, 2003 as described in part 4 above.

Multi-Age Grouping	Maximum Group Size and Adult:Child Ratios						
	10	16	18	20	22	24	No Maximum
Infants/ Toddlers: 6 wks.-30 mos.	1:5						
2-4 years		1:8					
2 1/2-3 years: 30-47 mos.			1:9				
2 1/2-5 years				1:11			
2 1/2 - 12 years	1:10						
3-5 years (includes 3- 4 year olds)					1:13		
4-5 years						1:16	
5-12 years							1:20

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-209; 71-3-502(a)(2); Acts 2001, ch. 436, Section 5; Public Chapter 453 (2001), Section 25.

Paragraph (1) of Appendix D, of Rule 1240-4-3-.14, Appendices, is amended by deleting the language “(0-30 months)” in the first line, and by substituting instead the language “(6 weeks-30 months)”, so that, as amended, Paragraph (1) shall read:

- (1) Recommended Toys and Equipment for Infants and Toddlers (6 weeks-30 months).

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-209; 71-3-502(a)(2); Acts 2001, ch. 436, Section 5; Public Chapter 453 (2001), Section 25..

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-36)

**DEPARTMENT OF HUMAN SERVICES - 1240
ADULT AND FAMILY SERVICES DIVISION**

CHAPTER 1240-4-6

LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to the Department's rules pursuant to TCA §§ 4-5-201 et seq. and 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30 PM Central Daylight Time on Wednesday, September 19, 2001, in Conference Room A, 7th Floor; in the Second Floor Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Daylight Time on Monday, September 24, 2001; and in State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Daylight Time on Wednesday September 26, 2001.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Doris Batey, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-4-6

LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

AMENDMENTS

Paragraph (25) of Rule 1240-4-6-.02, Definitions, is amended by deleting paragraph (25) in its entirety and by substituting instead the following new paragraph (25):

- (25) Toddler. A child who is twelve (12) months through thirty (30) months of age.

Rule 1240-4-6-.02, Definitions, is amended by adding the following new paragraph (17), so that, as amended, new paragraph (17) shall read as follows, and further amend Rule 1240-4-6-.02, Definitions, by re-numbering existing paragraphs accordingly after adding the new paragraph (17):

- (17) Infant. A child who is six (6) weeks through fifteen (15) months of age.

Parts 1-8 of subparagraph (f) of paragraph (4) of Rule 1240-4-6-.07, Staff, are amended by deleting parts 1-8 in their entireties and by substituting instead the following new parts 1-8, so that, as amended, parts 1-8 shall read as follows:

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-35)

**DEPARTMENT OF HUMAN SERVICES - 1240
ADULT AND FAMILY SERVICES DIVISION**

**CHAPTER 1240-4-7
REPORT OF LICENSING STATUS AND RATED LICENSING OF CHILD CARE AGENCIES**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to the Department's rules pursuant to TCA §§ 4-5-201 et seq. and 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30 PM Central Daylight Time on Wednesday, September 19, 2001; in the Second Floor Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Daylight Time on Monday, September 24, 2001; and in Conference Room A, 7th Floor, State Office Building, 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Daylight Time on Wednesday, September 26, 2001.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing or meeting dates, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Doris Batey, at 400 Deaderick Street, Nashville, Tennessee, (615) 313-5560 (TDD)- (615) 532-8569.

Copies of the text of the entire rule are available from William B. Russell, General Counsel, Department of Human Services, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville TN 37248-0006, 615-313-4731.

SUMMARY OF PROPOSED RULES

**CHAPTER 1240-4-7
REPORT CARDS AND RATED LICENSING FOR CHILD CARE AGENCIES**

1240-4-7-.01 PURPOSE AND SCOPE.

This Section establishes the purpose and scope of the rules that establish a system for evaluating, individually and collectively, all child care agencies licensed or approved by the Department of Human Services. The purpose of this system is to allow parents and caretakers of children to have a way to compare the relative quality of child care services offered by licensed or approved child care agencies when choosing a child care service and to encourage the improvement of child care services by completing report cards for those parents and caretakers to review and by awarding, for those agencies that wish to voluntarily participate in a rating system, a grade and higher subsidy payments to providers for children whose care is funded by the State of Tennessee.

The system consists of a mandatory annual report card on each agency, and a voluntary rating system which will assign scores based upon the report card evaluation and which will then grant a grade level, or “star”, as part of the voluntary rating system. The summary of the report card and rated licensing score will be posted with each child care agency’s license. The posting of the score on the report cards will not occur until October 1, 2002.

This Section sets forth the “key indicators” of child care quality as established by State law at T.C.A. 71-3-502(j), and which will be the basis upon which the report card and the rating will be based. These are:

- (a) Health and safety;
- (b) Training, education, certification, and credentials of all supervisory staff, including the director or licensee;
- (c) Staffing ratios;
- (d) Child development and enrichment;
- (e) Accreditation status; and
- (f) Adequacy of physical facilities.

1240-4-7-.02 DEFINITIONS.

This Section establishes numerous definitions related to the program.

1240-4-7-.03 REPORT CARD.

This Section establishes the process for developing the mandatory annual report cards for each child care agency that will be required for each child care agency seeking a renewal of its license or its approved status. The report card will not be completed for new child care agencies until they seek renewal of their licenses.

The Section sets out the “component area” concept that is used to evaluate a child care agency for the purpose of completing the report card. These component areas are based upon the key indicators described in Section .01 and are comprised of:

- (a) Component Areas for Family Child Care Homes and Group Child Care Homes:
 - 1. Professional Development;
 - 2. Compliance History;
 - 3. Parent/Family Involvement;
 - 4. Business Management; and
 - 5. Program Assessment.
- (b) Component Areas for Child Care Centers:

1. Director Qualifications;
2. Professional Development;
3. Compliance History;
4. Parent/Family Involvement;
5. Ratio and Group Size;
6. Staff Compensation; and
7. Program Assessment.

Within each component area are several “criteria” that are described in this Section that denote the basis for completing the report card for each level of child care that is to be given a rating, if the agency voluntary seeks a rating, or score.

The four (4) categories for the rated license will be:

- (a) “Complies with Licensing Regulations”. This designation denotes that the child care agency meets licensing regulations necessary for a license, but is not at a higher level. No further score will be given for an agency that meets this requirement.
- (b) Level One which denotes the entry level for the “Star Quality System” described in Rule 1240-4-7.04.
- (c) Level Two which denotes the second level of the “Star Quality System” and which requires a higher level of advancement in the component areas and the criteria that make up each component area described in Rule 1240-4-3-.03.
- (d) Level Three which denotes the third, and highest level of the “Star Quality System” and which requires the highest level of advancement in the component areas and the criteria described in 1240-4-3-.07.

In child care centers (13 or more children), the criteria for a one, two or three level rating include increasing requirements at each level for education, training and experience for the Director or licensee and the staff; a better history of compliance with child care regulations than the preceding level; more parent/family communication and involvement in the child care agencies; better adult to child supervision ratios; higher rating scales on the program assessment instrument used to determine child care quality and better staff compensation including the establishment of employee pay scales and the offering of better benefits for staff at each level.

In family child care home (5-7 children) and group child care homes (8-12), there are similar requirements at each level, but Director qualifications, Staff Compensation and adult:child ratios are not part of the report card/rating process for these classes of child care agencies.

1240-4-7-.04 STAR-QUALITY CHILD CARE PROGRAM.

This Section establishes the “Star-Quality Child Care Program for those child care agencies that voluntarily apply for this program. In this program, if the agency attains an overall rating at the one, two or three level under the report card process, they may apply for a “Star” designation (One Star, Two Star, and Three Star). For private agencies that take no children who receive State child care subsidies, they can display this rating to demonstrate official recognition of the level of quality they have attained. For those agencies that do care for any State subsidized children, they will receive a premium on the normal reimbursement

for child care for the State subsidized child. There will be a 5% premium for a One Star rating, 15% for a Two Star rating and 20% for a Three Star rating. The rating would have to be re-evaluated each year.

Those agencies that receive a two or three Star rating are also eligible for a biennial license or a triennial license at a reduced licensing fee.

This Section also the application process for the program and establishes the methodology for assigning a rating for each component area as well as an overall rating of the agency based upon a numerical score.

1240-4-7-.05 RE-EVALUATIONS AND REVIEWS OF REPORT CARDS AND AGENCY RATINGS.

This Section establishes how a child care agency may obtain a re-evaluation of its report card or star rating and what the review process involves. An initial review will be done by Department staff not associated with the Department's District that completed the report card and rating. A second review may be obtained by an Administrative Review under the Administrative Procedures Act through a hearing before an independent Department hearing officer.

The notice of rulemaking set herein was properly filed in the Department of State on the 31st day of July, 2001. (07-33)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Board of Medical Examiners to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-6-214, 63-6-224 and 63-10-404 (19). 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 Cumberland Room on the Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 2:30 p.m. (CDT) on the 22nd day of October, 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 Division's ADA Coordinator at the Division of Health Related Boards, 1st Floor Cordell Hull Building, 425 5th 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, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULE

NEW RULE

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0880-2-.15 Professional Secrets (Confidentiality) and Medical Records

0880-2-.15 PROFESSIONAL SECRETS (CONFIDENTIALITY) AND MEDICAL RECORDS.

- (1) Purposes – The purposes of these rules are:
 - (a) To recognize that the interests of the patient is always paramount. Everything that is done for a patient should be with his/her interests and well-being foremost in mind and done in such a manner as to encourage and promote dialog and effective communication between physicians and patients.
 - (b) To recognize that medical records are an integral part of the practice of medicine as defined in T.C.A. § 63-6-204.
 - (c) To give physicians, their professional and non-professional staff, and the public direction about the content, ownership, access, protection, transfer, retention, and destruction of those records.
 - (d) To recognize that, despite the fact that in Tennessee there currently exists no evidentiary privilege regarding physician/patient communications, there is an ethical and legal duty placed on physicians, and their professional and non-professional staff to keep certain confidences.
 - (e) To delineate what is expected of physicians in regards to the confidential information, or as it is referred to as in T.C.A. § 63-6-214 (b) (7) “professional secrets,” received in the course of their practice of medicine.
 - (f) To emphasize to patients that full disclosure of information to a physician is necessary in order that the physician may most effectively provide needed services and that when making such disclosure they are doing so with the knowledge that the physician will respect the confidential nature of the communication.
 - (g) To recognize that a distinction exists between a physician’s medical records for a patient receiving services in the physician’s office and those records created by the physician for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4) and that the distinction exists regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.
- (2) Conflicts – As to medical records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.

- (3) Applicability – These rules regarding medical records shall apply only to those records, the information for which was obtained by physicians or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Professional Secrets – Confidentiality – For purposes of this rule the terms “professional secret” as used in T.C.A. § 63-6-214 (b) (7), and “confidential information” are synonymous. Consequently, a violation of any of these rules, while not creating an individual cause of action on behalf of a patient against a physician, is grounds for disciplinary action before the Board. Additionally, these rules should not be construed to create any evidentiary privilege that is currently not recognized in the courts of this state.
 - (a) All information disclosed by a patient and information given to the patient by a physician during the course of the relationship between the physician and patient is confidential to the greatest possible degree and the physician shall not reveal it without the express consent of the patient, unless required to do so by law, or pursuant to a lawfully issued subpoena, or in the following circumstances:
 1. Where a patient threatens to inflict serious bodily harm to another person or to him or herself and there is a reasonable probability that the patient may carry out the threat, the physician shall take reasonable precautions for the protection of the intended victim, including if deemed necessary, notification of law enforcement authorities.
 2. When the physician is made a party by any patient(s) in any legal action civil, criminal or administrative, whether by deposition or otherwise, which presents issues requiring the disclosure of medical information but only as to the information relevant to those issues.
 3. When the physician is the Respondent in any Board disciplinary action based in whole or in part upon his/her actions in regard to any patient.
 4. While discussing with referring and consulting health care practitioners a mutual patient’s care and treatment course.
 5. While discussing decisions enumerated in living wills with the patient’s family members.
 - (b) It is a physician’s ultimate responsibility for the maintenance of confidentiality. A physician shall take all necessary and reasonable precautions to prevent the disclosure of confidential information by staff, supervisees and such businesses as practice management companies, and dictation and transcription services with whom the physician contracts by doing at least the following:
 1. Impressing upon applicants for employment, employees and supervisees in his/her clinical settings of the requirement of strict and absolute confidentiality of information regarding patients and compliance with these rules.
 2. Requiring that confidentiality provisions satisfactory under these rules are included in all employment, and supervision contracts and/or agreements.
 3. Refusing to enter into contracts with any business such as dictation or transcription services, and/or practice management companies in which there are no provisions insuring that the business has established procedures satisfactory under these rules to protect confidentiality.
- (5) Medical Records –

- (a) Defined - For purposes of these rules the term “medical records” means the electronic, digital or paper recorded information, including all items listed in T.C.A. § 63-2-101 (c) (2) and subparagraph (d) of this rule but does not include billing and financial information, from and/or about a patient’s physical or mental condition for purposes of the provision of medical services for the patient in any clinical setting other than a hospital as defined by T.C.A. § 68-11-302 (4) recorded by the physician, or any nurse practitioner and/or physician assistant under the physician’s supervision, or the physician’s employees.
- (b) Duty to Create and Maintain Medical Records – As a component of the standard of care and of minimal competency a physician must cause to be created and maintained, in compliance with the provision of these rules, a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation
- (c) Notice – Anywhere in these rules where notice is required to be given to patients of any physician that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement.
- (d) Distinguished from Hospital Medical Records - The medical records covered by these rules are separate and distinct from those records generated for the patient by the physician during the course of providing medical services for the patient in a hospital as defined by T.C.A. § 68-11-302 (4) regardless of whether the physician is an employee or a member of a group practice which is employed or owned by a hospital.
 - 1. The provisions of T.C.A. Title 68, Part 11, Chapter 3 govern medical records generated in a hospital as defined by T.C.A. § 68-11-302 (4).
 - 2. The medical records covered by these rules are those:
 - (i) That are created prior to the time of the patient’s admission to or confinement and/or receipt of services in a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room and/or hospital outpatient facility, and/or
 - (ii) That are created after the patient’s discharge from a hospital as defined by T.C.A. § 68-11-302 (4), emergency rooms or outpatient facility.
 - 3. Even though the records covered by these rules may, of necessity, reference provision of services in the hospital setting and the necessary initial work-up and/or follow-up to those services, that does not make them “hospital records” that are regulated by or obtainable pursuant to T.C.A. Title 68, Part 11, Chapter 3.
- (e) Content – All medical records, or summaries thereof, produced in the course of the practice of medicine for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating physician can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.
- (f) Ownership – While patients have a proprietary interest in the information contained in their records, the records belong to and are the property of the physician who creates them. For purposes of these rules, a physician owns the information regarding medical services rendered for patients created by him or herself and any nurse practitioners and/or physician assistants over whom the physician exercises supervision in any clinical setting other than a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.

1. A physician shall make all necessary arrangements to always have the original of any patient's medical records maintained in accordance with these rules unless ordered to do otherwise by a court of competent jurisdiction.
 2. The primary duty regarding medical records under this rule lies with the physicians who create and thereby own them. The physician must be assured that whomever has responsibility for medical records in their offices, in a group practice, or any other practice setting has made all necessary arrangements to comply with these rules before accepting or contracting for employment, or entering into contracts with practice management groups, dictation, or transcription services.
- (g) Access and Security – In accordance with these rules and ethical precepts concerning confidentiality and/or professional secrets, a physician, his/her employees and supervisees shall zealously guard against the unauthorized access to patient medical records.
1. General Access - Without a lawfully issued subpoena, access to medical records shall not be provided to any person or entity without consent of the patient. In the case of patients under the age of eighteen (18), except mature minors who have sought and received medical services independently, a parent or the legal guardian/representative (anyone acting in loco parentis) of that patient, must specifically authorize the access.
 - (i) Consent to provide access to the records by third party payors, peer review, and other consulting or treating health care professionals must be obtained.
 - (ii) The authorization to release records required by subpart (i) may be included with the physician's consent for treatment form if done in such a way as to reasonably constitute true "informed consent" on behalf of the patient. The intent being that the patient is made aware of all types of entities to whom information may or will be routinely released.
 - (iii) In the case of requests for information or medical records regarding a minor patient, the signature of a stepparent is not sufficient. A parent or legal guardian of the minor must sign such authorization.
 2. Notification to Minors - A physician shall notify a minor child patient that the information about the visit will be reported to the applicable third party payor for billing purposes and, as a result, information about the patient and the purpose for the visit may be disclosed to the subscriber-parent pursuant to an explanation of benefits.
 3. Copying Costs - A physician may charge a reasonable fee for copying and delivery of medical records. The physician may, to the extent that physical harm to the patient will not occur if the records are not made immediately available, require payment before release of the medical records. However, medical records shall not be withheld because of an unpaid bill for medical services. Absent a specific statute or rule applicable to specific types of medical records, copying costs and the timing of delivery of copies of medical records or summaries thereof shall be governed by the provisions of T.C.A. §§ 63-2-101 and 102 which provide:
 - (i) That costs shall not exceed twenty dollars (\$20.00) for medical records forty (40) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first forty (40) pages and the actual cost of mailing; and
 - (ii) That they shall be delivered within ten (10) working days of the written request when payment for the same has been timely made; and

- (iii) That the costs charged for reproducing records of patients involved in a workers' compensation claim shall be as defined in T.C.A. § 50-6-204.
4. Records of Other Health Care Providers - If the information contained in a patient's medical records received from another health care practitioner is relied upon by a physician in reaching a diagnosis or treatment plan for a patient they are considered part of the physician's medical records but only those portions that were relied upon.
- (i) The records of another health care practitioner shall not be considered as part of a physician's medical record if the information relied upon by the physician in reaching a diagnosis or treatment plan for the patient is recorded directly from the records of the other health care professional into the physician's own medical records for that patient.
 - (ii) Unless the patient provided the medical records from other health care practitioners those records cannot be released to anyone, including the patient, without a properly executed authorization being delivered to the other practitioner(s) who shall be allowed to exercise the options authorized by T.C.A. § 63-2-101 before the records are released.
5. Security - A physician shall institute in all his/her clinical settings, or before accepting employment with a group practice, or contracting with practice management, data entry and/or storage companies, ascertain the existence of the following necessary and adequate safeguards in regards to electronically or digitally stored, and where applicable, paper medical records:
- (i) That confidential medical information is entered only by authorized personnel, additions to the record are time and date stamped, and the person making the additions is identified in the record; and
 - (ii) That the patient and physician are advised about the existence of computerized databases, as well as all individuals and organizations with some form of access to them in which medical information concerning the patient is stored and the level of access permitted to them prior to the physician's release of the medical information to the entity or entities maintaining the computer databases.
 - (iii) That patient data shall be assigned a security level appropriate for the data's degree of sensitivity, which shall also be used to control who has access to the information.
 - (iv) That there is full compliance with the provisions of T.C.A. § 63-2-101 (b) (2) regarding release of patient identifying information. Such information shall not be released without the express consent of the patient.
 - (v) That when confidential medical data is authorized or required by law or subpoena to be released it is:
 - (I) Limited to only those individuals or agencies with a bona fide use for the data; and.
 - (II) Only the data necessary for the bona fide use is released; and
 - (III) Confined to the specific purpose for which the information is requested; and
 - (IV) Limited to the specific time frame requested; and

- (V) That all organizations or individuals to which the confidential data is released are advised that authorized release of data to them does not authorize their further release of the data to additional individuals or organizations, or subsequent use of the data for other purposes.
- (vi) That the procedures for adding to or changing data on the computerized database specifically identify:
 - (I) The individuals authorized to make changes; and
 - (II) The time periods in which changes take place; and
 - (III) Those individuals who will be informed about changes in the data.
- (vii) That procedures are in place for purging the computerized data base of archaic or inaccurate data and notification to both the physician and patient prior to the purge.
- (viii) That there is no mixing of a physician's computerized patient records with those of other computer service bureau clients and that procedures are in place to protect against inadvertent mixing of individual records or segments thereof.
- (ix) That the computerized medical data base is on-line to the computer terminal only when authorized computer programs requiring the medical data are being used.
- (x) That individuals and organizations external to the physician's clinical setting are not provided on-line access to a computerized database containing identifiable data from medical records concerning patients.
- (xi) That access to the computerized data base is controlled through security measures such as passwords, encryption (encoding) of information, and scannable badges or other user identification.
- (xii) That back-up systems and other mechanisms are in place to prevent data erasure, loss and downtime as a result of hardware or software failure.
- (xiii) That stringent security procedures are in place to prevent unauthorized access to patient records.
- (xiv) That personnel audit procedures are in place to establish a record in the event of unauthorized disclosure of medical data.
- (xv) That terminated or former employees in the physician's clinical setting and/or data processing environment have no access to data from the medical records.
- (xvi) That upon termination of computer services for a physician, those computer files maintained for the physician are physically turned over to the physician. They may be destroyed or erased only if it is established that the physician has another copy in some form.
- (xvii) That in the event of file erasure, the computer service bureau is required to verify in writing to the physician that the erasure has taken place and identify as specifically as possible the former location and/or description of the data erased.

7. Data Collection Companies - Data collection from computerized or other medical records on behalf of pharmaceutical houses and other businesses for marketing and/or marketing related research purposes is permitted only when the physician:
 - (i) Is absolutely certain that the data-collecting does not capture patients' names, addresses or other identifying information; and
 - (ii) The patients have given their permission after being fully informed about the purpose of such disclosures.
 8. Business and Insurance Company Physician Employees or Agents
 - (i) Where a physician's services are limited to performing an isolated assessment of an individual's health or disability for an employer, business, or insurer, the information obtained by the physician as a result of such examinations is confidential and shall not be communicated to a third party without the individual's prior written consent, unless required by law.
 - (ii) If the individual has authorized the release of medical information to an employer or a potential employer, the physician shall, unless otherwise required by worker's compensation laws, release only that information which is reasonably relevant to the employer's decision regarding that individual's ability to perform the work required by the job.
 - (iii) The physician shall not otherwise discuss the employee's health condition with the employer without the employee's consent.
 - (iv) Whenever statistical information about employees' health is released, all employee identifying information shall be deleted.
- (h) Transfer
1. Records of Physicians upon Death or Retirement - When a physician retires or dies all of his/her patients should be notified by the physician, or his/her authorized representative and urged to find a new physician and be informed that upon authorization, records will be sent to the new physician.
 2. Records of Physicians Departure from a Group - The responsibility for notifying patients of a physician who leaves a group practice shall be governed by the physician's employment contract.
 - (i) Whomever is responsible for that notification must inform all of the physician's patients of his/her departure.
 - (ii) Those patients shall also be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice.
 - (iii) Physicians shall not enter into employment contracts with group practices the provisions of which in any way interfere with an individual physician's discharge of these duties by authorizing the group to withhold patient lists or other necessary information.
 3. Sale of a Medical Practice - A physician or the estate of a deceased physician may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of

the seller by purchasing the physician's medical records. Therefore, the transfer of records of patients is subject to the following:

- (i) The physician (or the estate) must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality as provided in these rules.
- (ii) All active patients shall be notified that the physician (or the estate) is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another physician or entity of their choice.

4. Abandonment of Records –

- (i) It shall be a prima facie violation of T.C.A. 63-6-214 (b) (1) for a physician to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
- (ii) Upon notification that a physician in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records patients should take all reasonable steps to obtain their medical records by whatever lawful means available and should immediately seek the services of another physician.

(i) Retention of Medical Records – Medical records shall be retained for a period of not less than ten (10) years from the physician's or his supervisees' last professional contact with the patient except for the following:

- 1. Immunization records shall be retained indefinitely.
- 2. Medical records for incompetent patients shall be retained indefinitely.
- 3. Mammography records shall be retained for at least twenty (20) years.
- 4. X-rays and radiographs shall be retained for at least four (4) years after which if there exist separate interpretive records thereof they may be destroyed.
- 5. Medical records of minors shall be retained for a period of not less than ten (10) years after the date on which the patient reaches the age of eighteen (18) or the date of the physician's or his supervisees' last professional contact with the patient whichever is longer.

(j) Destruction of Medical Records -

- 1. No record shall be destroyed on an individual basis.
- 2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures.
- 3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
- 4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

- (6) Violations – Violation of any provision of these rule regarding medical records and/or professional secrets is grounds for disciplinary action pursuant to T.C.A. §§ 63-6-214 (b) (1), and/or (2), and/or (7).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-6-101, 63-6-204, and 63-6-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-27)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Board of Medical Examiners to consider the promulgation of new rules and amendments to rules pursuant to T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-201, 63-6-207, 63-6-208, 63-6-210, 63-6-211, 63-6-214, 63-6-216, 63-6-224, 63-24-102, 63-24-103, 63-24-105, 63-24-106, 63-24-107, and Public Chapter 320, Public Acts of 2001. 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 Cumberland Room on the Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 2:30 p.m. (CDT) on the 22nd day of October, 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 Division's 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, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

NEW RULES

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0880-2-.19 Continuing Education

0880-2-.19 CONTINUING EDUCATION.

- (1) Hours Required, Waiver, and Exemptions
- (a) All licensees must complete forty (40) hours of continuing medical education courses during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year. The hours must have Category I accreditation from the American Medical Association (A.M.A.).

- (b) The Board approves 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.
 - (c) Waiver - The Board may waive the requirements of these rules in cases where illness, disability, or other undue hardship beyond the control of the licensee prevents a licensee from complying. Requests for waivers must be sent in writing to the Board prior to the expiration of the calendar year in which the continuing education is due.
 - (d) Exemptions:
 - 1. Anyone whose license is in the retired or inactive status is exempt from the requirements of these continuing education rules.
 - 2. Anyone who obtains licensure in the same calendar year as successful completion of the USMLE Step 3 is exempt from the provisions of these continuing education rules but only for the calendar year in which licensure is issued.
- (2) Proof of Compliance - All licensees must retain independent documentation of completion of all continuing education hours and compliance with the provisions of these rules.
- (a) This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was acquired.
 - (b) This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process.
 - (c) Documentation verifying the licensee's completion of the continuing education hours may consist of any one (1) or more of the following:
 - 1. Original certificates or photocopies of original certificates from course providers verifying the licensee's attendance and/or completion of hours.
 - 2. Original letters or photocopies of original letters from course providers verifying the licensee's attendance and/or completion of hours.
- (3) Acceptable Continuing Education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education hours must be approved in content, structure and format by the A.M.A.
- (4) Violations and Disciplinary Orders
- (a) Any licensee who fails to obtain the required continuing education hours or otherwise comply with the provisions of these rules will be subject to disciplinary action.
 - (b) Continuing education hours obtained as a result of compliance with the terms of Board Orders in any disciplinary action or obtained pursuant to licensure or renewal restriction/conditions mandated by the Board shall not be credited toward the continuing education hours required to be obtained in any calendar year.

AMENDMENTS

Rule 0880-2-.01 Definitions, is amended by deleting paragraph (1) in its entirety and renumbering the remaining paragraphs accordingly.

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

Rule 0880-2-.02 Fees, is amended by deleting the language of paragraph (2) in its entirety and substituting instead the following new language, so that as amended that paragraph shall read as follows:

- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must draw against an account in a United States Bank, and made payable to the Tennessee Board of Medical Examiners.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-6-101, 63-6-201, 63-6-207, 63-6-208, 63-6-210, 63-6-211 and 4-3-1011.

0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended first by deleting the language of paragraph (5) and subparagraphs (5) (a) through (d), as being repetitive of paragraph (4), and is further amended by renumbering subparagraph (5) (e) as paragraph (5), and is further amended by renumbering subparagraph (5) (f) as paragraph (6), and is further amended by renumbering existing paragraphs (6) and (7) as paragraphs (7) and (8) respectively, and is further amended by deleting the language of part (3) (b) 1. in its entirety and substituting instead the following new language, so that as amended part (3) (b) 1. shall read as follows:

- (3) (b) 1. An applicant has a right to a contested case hearing only if the adverse decision on an application was based upon subjective or discretionary criteria and only if the request is in writing and received on or before the thirtieth (30th) day after receipt of the notice by the applicant.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, and 63-6-216.

0880-2-.09 Licensure Renewal, is amended by deleting the catchline and rule in its entirety and substituting instead the following new catchline and rule, so that as amended the new rule shall read as follows:

0880-2-.09 LICENSURE RENEWAL AND REINSTATEMENT.

- (1) All licensees must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
 - (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
 - (b) Methods of Renewal – licensees may accomplish renewal by one of the following methods:

1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/
 2. Paper Renewals - Licensees who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the license's expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The renewal and state regulatory fees as provided in Rule 0880-2-.02.
- (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-2-.02.
 - (d) 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 pursuant to rule 1200-10-1-.10.
 - (e) Anyone submitting a signed renewal form, electronically or otherwise, which is found to be fraudulent or untrue may be subject to disciplinary action.
 - (f) Any licensee who receives notice of failure to timely renew pursuant to T.C.A. § 63-6-210 and rule 1200-10-1-.10, and who, on or before the last day of the month following the month in which the license expires, executes and files in the Board's administrative office an affidavit of retirement pursuant to Rule 0880-2-.10 may have their licenses retired effective on their licensure expiration date.
- (2) Licenses processed pursuant to T.C.A. § 63-6-210 and rule 1200-10-1-.10 for failure to renew may be reinstated upon meeting the following conditions:
 - (a) Obtain, complete and submit a renewal/reinstatement/reactivation application; and
 - (b) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the good cause for failure to renew; and
 - (c) Submit, along with the application, payment of all past due renewal fees; and the late renewal fee provided in rule 0880-2-.02; and
 - (d) Submit, along with the application, documentation of successful completion of the continuing education requirements provided in rule 0880-2-.19 for all the calendar years (January 1 – December 31) that the license was expired that precede the calendar year during which the reinstatement is requested.
 - (e) If derogatory information or communication is received during the renewal process, if requested by the Board or its duly authorized representative, appear before the Board, a duly constituted panel of the Board, a Board member, a screening panel when the individual is under investigation or the 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.

- (f) Any licensee who fails to renew licensure prior to the expiration of the second (2nd) year after which renewal is due may be required to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (3) Renewal issuance and reinstatement decisions pursuant to this Rule may be made administratively subject to review by the Board, any Board member or the Board Designee.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-210 and Public Chapter 320, Public Acts of 2001.

Rule 0880-2-.10 Licensure Retirement/Inactivation and Reactivation, is amended by deleting subparagraphs (3) (a) and (3) (b) and substituting instead the following language, so that as amended, the new subparagraphs (3) (a) and (3) (b) shall read:

- (3) (a) Fully complete and submit the Board's Renewal/Reinstatement/Reactivation Application along with payment of the licensure renewal fee as provided in Rule 0880-2-.02 to the Board's Administrative Office. If retirement was pursuant to Rule 0880-2-.09 (1) (f) and reactivation was requested prior to the expiration of one year from the date of retirement, the Board may require payment of the late penalty and past due renewal fees as provided in Rule 0880-2-.02; and
- (3) (b) Submit, along with the Board's Renewal/Reinstatement/Reactivation Application, documentation of successful completion of the continuing education requirements provided in rule 0880-2-.19 obtained within two (2) years preceding the reactivation request.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-210, and Public Chapter 320, Public Acts of 2001.

0880-2-.11 Officers, Records, Meeting Requests, Certificates of Fitness, Replacement Licenses, Consultants, Advisory Rulings, Declaratory Orders and Screening Panels, is amended by deleting subparagraph (8) (b) but not all its parts and part (8) (b) 1. but not all its subparts, in their entireties and substituting instead the following new subparagraph and part, so that as amended the subparagraph and part shall read as follows:

- (8) (b) After completion of an investigation by the Division, may upon request of either the state, or the licensee who is the subject of an investigation but only with the agreement of the state, or upon request of both the licensee and the state, conduct a non-binding informal hearing and make recommendations as a result thereof as to what, if any, terms of settlement of any potential disciplinary action are appropriate.
 - 1. Neither the Rules of Civil Procedure, the Rules of Alternative Dispute Resolution, the Rules of Evidence or Contested Case Procedural Rules under the Administrative Procedures Act shall apply in informal hearings before the screening panel(s).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101 and 63-6-214.

0880-2-.12 Licensure Discipline and Civil Penalties, is amended by adding the following new language as subparagraph (1) (k), so that as amended the new subparagraph (1) (k) shall read as follows:

- (1) (k) Order Modifications – The Board retains jurisdiction, and for good cause shown will entertain petitions, to modify the disciplinary portion of orders issued as a consequence of contested cases decided by it or any of its duly constituted panels, but will not under any circumstances consider modification of any findings of fact, conclusions of law, or policy reasons contained in the original orders.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101 and 63-6-214.

0880-2-.14 Scope of Practice, is amended by deleting the catchline of that rule and substituting instead the catchline “Specifically Regulated Areas and Aspects of Medical Practice,” and if further amended by deleting paragraph (4) in its entirety and substituting instead the following new paragraph (4), and is further amended in paragraph (6) by designating the existing subparagraph (b) as subparagraph (e) and by inserting the following new language as subparagraphs (6) (b), (c) and (d), and is further amended by adding the following new paragraphs (8) and (9), so that as amended the new catchline and paragraphs (4), subparagraphs (6) (b), (c) and (d), and paragraphs (8) and (9) shall read as follows:

0880-2-.14 SPECIFICALLY REGULATED AREAS AND ASPECTS OF MEDICAL PRACTICE.

- (4) Prescription Legibility- Any physician writing a prescription on a pre-printed prescription blank with multiple physicians’ names shall circle his or her name on the prescription. Any physician writing a prescription on a prescription blank which does not have the physician’s name pre-printed on it shall use a hand stamp with his or her name on it below the signature on the prescription. If a hand stamp or a pre-printed prescription blank are not available or not practicable, the physician shall legibly print his or her full name below the signature line for identification purposes. This rule in no case replaces the need for a signature on the prescription. The physician’s signature is required as the official certifying act of the physician. Physicians may utilize a legible and specifically identifying electronic signature to satisfy the requirements of this rule and as the official certifying act of the physician.
- (6) (b) No physician is required to provide treatment to patients with intractable pain with opiate medications but when refusing to do so shall inform the patient that there are physicians who specialize in the treatment of severe, chronic, intractable pain with methods including the use of opiates.
- (6) (c) If a physician provides medical care for persons with intractable pain, with or without the use of opiate medications, to the extent that those patients become the focus of the physician’s practice the physician must be prepared to document specialized medical education in pain management sufficient to bring the physician within the current standard of care in that field which shall include education on the causes, different and recommended modalities for treatment, chemical dependency and the psycho/social aspects of severe, chronic intractable pain.
- (6) (d) The treatment of persons with an acute or chronic painful medical condition who also requires treatment for chemical dependency by a physician shall be governed by subsections (c) and (d) of Section 8 of Public Chapter 327 of the Public Acts of 2001.
- (8) Code of Ethics - The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the “Code of Medical Ethics” published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.
 - (a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board’s code of ethics shall be grounds for disciplinary action pursuant to T.C.A. § 63-6-214 (b) (1).
 - (b) A copy of the A.M.A. “Code of Medical Ethics” may be obtained from the Order Department of the A.M.A. at 515 N. State Street, Chicago, IL 60610 or by phone at 1-800-621-8335, or on the Internet at <http://www.ama-assn.org>.
- (8) Employment of Physicians –
 - (a) Medical Orders, Referrals or Providing Supervision, Responsibility and/or Control – Throughout Tennessee Code Annotated, Title 63 and 68 there are provisions of the law requiring that identified

health care practitioners may provide services or practice only upon the order of, or pursuant to referrals from, or under the supervision, control and/or responsibility of a licensed physician.

1. A physician cannot issue effective and ethical medical orders, or make effective and ethical referrals, or exercise effective and ethical supervision, responsibility and/or control as an employee of, or incident to any contract of employment for the purposes of issuing medical orders to, or making referrals to, or providing supervision, responsibility and/or control with any health care professional, or group, company, corporation or other such entity comprised thereof whose practice is required to be performed, or whose services are required to be rendered, pursuant to the order of, or pursuant to referrals from, or under the supervision, or responsibility and/or control of a physician.
2. It shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1) for a physician to:
 - (i) Be an employee of such health care professionals, or group, company, corporation or other such entity comprised thereof who provide their services to persons who are not clearly identifiable as patients of the physician for the purpose of issuing orders, providing referrals or providing supervision, or responsibility and/or control.
 - (ii) Enter into a contract for the issuance of orders to, or the making of referrals to, or the provision of supervision, responsibility and/or control for such health care professionals, or group, company, corporation or other such entity comprised thereof, who provide their services to persons who are not clearly identifiable as patients of the physician.

(b) Nothing in this rule shall be construed as

1. Affecting the employment or contract provisions, or services incident thereto, of T.C.A. §§ 63-6-204 (d) or (e) or 68-11-205 (b) or (c); or
2. Affecting contracts entered into by physicians for the employment of other health care practitioners for the provision of their health care services to the patients of the employing physician.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-6-214, and Public Chapter 327 of the Public Acts of 2001.

Rule 0880-4-.01 Definitions, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-103, and 63-24-105.

0880-4-.05 Licensure Process, is amended by deleting the words and letter “paragraphs (i) and” from subparagraph (3) (a) and substituting instead the word “subparagraph”, so that as amended subparagraph (3)(a) shall read as follows:

- (3) (a) Comply with all the requirements of paragraph (2) of this rule except subparagraph (j).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-104, and 63-24-105.

0880-4-.09 Licensure Renewal, is amended by deleting the catchline and rule in its entirety and substituting instead the following new catchline and rule, so that as amended the new rule shall read as follows:

0880-4-.09 LICENSURE RENEWAL AND REINSTATEMENT.

- (1) All licensees must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
 - (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
 - (b) Methods of Renewal – Licensees may accomplish renewal by one of the following methods:
 1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/
 2. Paper Renewals - Licensees who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the license's expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The renewal and state regulatory fees as provided in Rule 0880-4-.06.
 - (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-4-.06.
 - (d) 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 pursuant to rule 1200-10-1-.10.
 - (e) Anyone submitting a signed renewal form, electronically or otherwise, which is found to be fraudulent or untrue may be subject to disciplinary action.
 - (f) Any licensee who receives notice of failure to timely renew pursuant to rule 1200-10-1-.10, and who, on or before the last day of the month following the month in which the license expires, executes and files in the Board's administrative office an affidavit of retirement pursuant to Rule 0880-4-.11 may have their licenses retired effective on their licensure expiration date.
- (2) Licenses processed pursuant to rule 1200-10-1-.10 for failure to renew may be reinstated upon meeting the following conditions:
 - (a) Obtain, complete and submit a renewal/reinstatement/reactivation application; and
 - (b) Payment of all past due renewal fees; and the late renewal fee provided in rule 0880-4-.06; and

- (c) If derogatory information or communication is received during the renewal process, if requested by the Board or its duly authorized representative, appear before the Board, a duly constituted panel of the Board, a Board member, a screening panel when the individual is under investigation or the 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.
 - (d) Any licensee who fails to renew licensure prior to the expiration of the second (2nd) year after which renewal is due may be required to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (3) Renewal issuance and reinstatement decisions pursuant to this rule may be made administratively subject to review by the Board, any Board member or the Board Designee.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105, and 63-24-106.

Rule 0880-4-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph 2 (e) in its entirety and substituting instead the following new subparagraph (2) (e), so that as amended the new subparagraph (2) (e) shall read as follows:

- (2) (e) License Revocation - 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 Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time that it deems 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.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-24-101, 63-24-102, and 63-24-107.

Rule 0880-5-.08 Maintaining Certification, Renewal, Retirement and Reinstatement, is amended by deleting all paragraphs of that rule and substituting instead the following new paragraphs, so that as amended the new rule shall read as follows:

0880-5-.08 MAINTAINING CERTIFICATION, RENEWAL, RETIREMENT AND REINSTATEMENT.

- (1) All certificate holders must renew their certificates to be able to legally continue in practice. Renewal is governed by the following:
 - (a) The due date for renewal is its expiration date which is the last day of the month in which a certificate holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
 - (b) Methods of Renewal – Renewal may accomplish by one of the following methods:
 - 1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/

2. Paper Renewals – Certificate holders who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a certificate holder must submit to the Division of Health Related Boards on or before the certificate’s expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The renewal and state regulatory fees as provided in Rule 0880-5-.02.
 - (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-5-.02.
 - (d) Any individual who fails to comply with the renewal rules and/or notifications sent to them concerning failure to timely renew shall have their certificates processed pursuant to rule 1200-10-1-.10.
 - (e) Anyone submitting a signed renewal form, electronically or otherwise, which is found to be fraudulent or untrue may be subject to disciplinary action.
 - (f) Any certificate holder who receives notice of failure to timely renew pursuant to rule 1200-10-1-.10, and who, on or before the last day of the month following the month in which the certificate expires, executes and files in the Board’s administrative office an affidavit of retirement pursuant to paragraph (2) of this rule may have their certificates retired effective on their certificate’s expiration date.
- (2) Certificate Retirement
- (a) Certificate holders who wish to retain their certification but not actively practice will not be required to comply with the certification renewal process by doing the following:
 1. Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 2. Submit any documentation which may be required by the form to the Board Administrative Office.
 - (b) Upon successful application for retirement of certification with completion and receipt of all proper documentation to the Board’s satisfaction, the Board shall register the certificate as retired. Any person who has a retired certificate may not practice in Tennessee.
- (3) Reactivation - Any certificate holder whose certificate has been retired or processed pursuant to rule 1200-10-1-.10 for failure to timely renew 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) Fully complete and submit the Board’s Reactivation Application along with payment of:
 1. For those reactivating a retired certificate the certification renewal fee.
 2. For those who are reactivating a certificate processed pursuant to rule 1200-10-1-.10 for failure to timely renew all past due renewal fees and the late renewal fee.

- (c) If requested, after review by the Board, a designated Board member, or the Board's consultant appear before the either Board, or a duly constituted panel of the Board, or another Board member, or the Board Designee for an interview regarding continued competence in the event of certification retirement, administrative revocation or other practice inactivity in excess of two (2) years and meet such other requirements the Board feels necessary to establish current levels of competency.
- (4) Renewal issuance and reinstatement decisions pursuant to this rule may be made administratively subject to review by the Board, any Board member or the Board Designee.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-23)

**BOARD OF MEDICAL EXAMINERS' - 0880
COMMITTEE ON PHYSICIAN ASSISTANTS**

There will be a hearing before the Tennessee Board of Medical Examiners' and its Committee on Physician Assistants to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-19-105, and 63-19-107. 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 Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 1st day of October, 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 0880-3-.01, Definitions, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: *T.C.A. §§ 4-5-202, 63-1-107, 63-19-104, and 63-19-105.*

0880-3-.07 Application Review, Approval, and Denial, is amended by deleting part (5) (b) 1. in its entirety and substituting instead the following language, so that as amended, the new part (5) (b) 1. shall read:

- (5) (b) 1. An applicant has a right to a contested case hearing only if the adverse decision on an application was based upon subjective or discretionary criteria and only if the request is in writing and received on or before the thirtieth (30th) day after receipt of the notice by the applicant.

Authority: *T.C.A. §§ 4-5-202, 63-19-104, 63-19-105, and 63-19-111.*

Rule 0880-3-.09 Licensure Renewal is amended by deleting the rule in its entirety and substituting instead the following new rule, so that as amended the rule shall read as follows:

0880-3-.09 LICENSURE RENEWAL AND REINSTATEMENT OF AN EXPIRED LICENSE.

- (1) All physician assistants must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
- (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
- (b) Methods of Renewal – Licensees may accomplish renewal by one of the following methods:
1. Internet Renewals – Individuals may apply for renewal via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/
 2. Paper Renewals - Licensees who have not renewed their authorization online via the Internet will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the license's expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The renewal and state regulatory fees as provided in Rule 0880-3-.06.

- (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-3-.06.
 - (d) 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 pursuant to rule 1200-10-1-.10.
 - (e) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action as provided in Rule 0880-3-.15.
 - (f) Any license holder who receives notice of licensure expiration may, within thirty (30) days of receipt of the notice pursuant to Rule 0880-3-.11, execute and file in the Board's administrative office an affidavit of retirement which will effectively retire the license as of the thirtieth (30th) day after the renewal due date.
- (2) Reinstatement of Expired Licenses - Reinstatement of a license that has expired pursuant to rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
- (a) Submission of a completed reinstatement application; and
 - (b) Payment of all past due renewal fees, including late renewal fee; and
 - (c) Proof of the required continuing education.
- (3) Renewal and reinstatement decisions pursuant to this rule may be made administratively and are subject to Committee and Board review.

Authority: T.C.A. §§ 4-5-202, 63-1-107, 63-19-104, and 63-19-105.

Rule 0880-3-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph (2) (e) in its entirety and substituting instead the following language, and is further amended by adding the following new language as subparagraph (2) (j), so that as amended, the new subparagraphs (2) (e) and (2) (j) shall read:

- (2) (e) License Revocation - 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, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time that it deems appropriate. However, no petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.
- (2) (j) Order Modifications – The Committee retains jurisdiction, and for good cause shown will entertain petitions, to modify the disciplinary portion of orders issued as a consequence of contested cases decided by it or any of its duly constituted panels, but will not under any circumstances consider modification of any findings of fact, conclusions of law, or policy reasons contained in the original orders.

Authority: T.C.A. §§ 4-5-105, 4-5-202, 63-1-134, 63-19-104, 63-19-106, 63-19-107, 63-19-108, and 63-19-111.

Rule 0880-10-.01 Definitions is amended by deleting paragraph (1) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-115, 63-6-216, 63-19-102, 63-19-103, 63-19-104, 63-19-201, 63-19-203, 63-19-204, 63-19-205, 63-19-210, and 68-1-701.

0880-10-.07 Application Review, Approval, and Denial, is amended by deleting part (4) (b) 1. in its entirety and substituting instead the following language, so that as amended, the new part (4) (b) 1. shall read:

- (4) (b) 1. An applicant has a right to a contested case hearing only if the adverse decision on an application was based upon subjective or discretionary criteria and only if the request is in writing and received on or before the thirtieth (30th) day after receipt of the notice by the applicant.

Authority: T.C.A. §§ 4-5-202, 63-19-104, 63-19-202, 63-19-111, 63-19-201, and 63-19-202.

Rule 0880-10-.09 Licensure Renewal is amended by deleting the rule in its entirety and substituting instead the following new rule, so that as amended the rule shall read as follows:

0880-10-.09 LICENSURE RENEWAL AND REINSTATEMENT OF AN EXPIRED LICENSE.

- (1) All orthopedic physician assistants must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
- (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
- (b) Methods of Renewal – Licensees may accomplish renewal by one of the following methods:
1. Internet Renewals – Individuals may apply for renewal via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/
 2. Paper Renewals - Licensees who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the license's expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The renewal and state regulatory fees as provided in Rule 0880-10-.06.
- (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-10-.06.
- (d) 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 pursuant to rule 1200-10-1-.10.
- (e) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action as provided in Rule 0880-10-.15.
- (f) Any license holder who receives notice of licensure expiration may, within thirty (30) days of receipt of the notice pursuant to Rule 0880-10-.11, execute and file in the Board's administrative office an affidavit of retirement which will effectively retire the license as of the thirtieth (30th) day after the renewal due date.

- (2) Reinstatement of Expired Licenses - Reinstatement of a license that has expired pursuant to rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
 - (a) Submission of a completed reinstatement application; and
 - (b) Payment of all past due renewal fees, including late renewal fee; and
 - (c) Proof of the required continuing education.
- (3) Renewal and reinstatement decisions pursuant to this rule may be made administratively and are subject to Committee and Board review.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-19-104, 63-19-201, 63-19-206, and 63-19-209.

Rule 0880-10-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph (2) (e) in its entirety and substituting instead the following language, and is further amended by adding the following new language as subparagraph (2) (i), so that as amended, the new subparagraphs (2) (e) and (2) (i) shall read:

- (2) (e) License Revocation - This is the most severe form of disciplinary action which removes a license holder from the practice of the profession and terminates the certification or licensure previously issued. The Committee, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time that it deems appropriate. However, No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.
- (2) (i) Order Modifications – The Committee retains jurisdiction, and for good cause shown will entertain petitions, to modify the disciplinary portion of orders issued as a consequence of contested cases decided by it or any of its duly constituted panels, but will not under any circumstances consider modification of any findings of fact, conclusions of law, or policy reasons contained in the original orders.

Authority: T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 63-1-134, 63-19-104, 63-19-201, 63-19-202, 63-19-203, 63-19-204, 63-19-205, 63-19-206, 63-19-207, 63-19-208, and 63-19-210.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of July, 2001. (07-02)

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of amendments to rules, new rules, and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Big Tennessee Room of the Cordell Hull Building located at 425 5th Ave. N., Nashville, TN at 2:30 p.m. (CDT) on the 20th day of September, 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, 1st Fl., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing, visit the Department of Health’s web page on the Internet at www.state.tn.us/health and click on “rulemaking hearings” or 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

Public Chapter 123 of the Public Acts of 2001 establishes the new practitioner categories of Senior Psychological Examiner and Certified Psychological Assistant, and requires several rule amendments to Chapters 1180-1, 1180-2, and 1180-3. A new chapter of rules, 1180-4, will be entitled Rules Governing Certified Psychological Assistants. The current chapter 1180-4, Rules of Procedure for Hearing Contested Cases, will be repealed.

AMENDMENTS

Rule 1180-1-.03 Fees—This rule amendment establishes fees for the new practitioner categories, allows for payment by credit card or other Division-approved electronic methods, and increases most fees for all practitioners, as indicated below:

(1) Fee Schedule:	Amount
(a) Application	\$175.00
(b) Temporary License	\$100.00
(c) Provisional License	\$100.00
(d) Oral Examination	\$200.00
(e) License	\$200.00
(f) Certificate	\$150.00
(g) License Renewal (biennial)	\$250.00

(h) Certificate Renewal (biennial)	\$150.00
(i) Late Renewal	\$100.00
(j) Endorsement Verification	\$ 25.00
(k) State Regulatory (biennial)	\$ 10.00
(l) Replacement License or Certificate	\$ 25.00

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-11-104, 63-11-207, 63-11-208, 63-11-209, 63-11-210, 63-11-215, 63-11-217, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-1-.04 Application Review, Approval, Denial, and Interviews—This rule amendment changes a deadline from ninety (90) days to (60) days.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-207, 63-11-208, 63-11-215, 63-11-217, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-1-.05 Renewal of License—This rule amendment deletes the concept of administrative revocation and removes language regarding continuing education.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-11-104, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-1-.10 Disciplinary Grounds, Actions, Civil Penalties and Informal Settlements—This rule amendment deletes the concept of administrative revocation.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, and 63-11-215.

Rule 1180-1-.10 Disciplinary Grounds, Actions, Civil Penalties and Informal Settlements—This rule amendment, in addition to implementing the provisions of Public Chapter 123, deletes the concept of informal settlements, and establishes the concept of using screening panels for disciplinary matters.

Authority: T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 63-11-104, 63-11-215, and Public Chapters 123 and 322 of the Public Acts of 2001.

Rule 1180-2-.04 Examinations—This rule amendment changes some procedures regarding computer-based testing of applicants.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-208, 63-11-209, and 63-11-210.

Rule 1180-2-.05 Temporary License—This rule amendment concerns the length of term for a temporary license and requests for extensions of the term length.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-208, 63-11-210, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-2-.06 Provisional License—This rule amendment concerns the length of term for a provisional license and requests for extensions of the term length.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-208, and 63-11-211.

Rule 1180-3-.02 Qualifications for Licensure—This rule amendment establishes qualifications for the new practitioner category of Senior Psychological Assistant and includes new requirements if licensed as a Psychological Examiner after June 30, 1991, as indicated below:

- (2) (b) If duly licensed as a Psychological Examiner after June 30, 1991, and are rendering health-related clinical activities or services
 1. Completion of five (5) years of applied experience from the date of original licensure or from the date of issuance of a temporary permit is required; and
 2. Completion of two hundred (200) hours of post-licensure continuing education. The source of a minimum of ninety (90) of these two hundred (200) hours of continuing education must be formal as provided in rule 1180-1-.08 (2). A minimum of forty-five (45) of these ninety (90) hours must be provided by an APA approved Continuing Education provider as provided in rule 1180-1-.08 (2) (a) 1. The source of the remaining one hundred-ten (110) hours of Continuing Education can be informal as provided in rule 1180-1-.08 (3).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-3-.03 Procedures for Licensure—This rule amendment establishes procedures for the new practitioner category of Senior Psychological Assistant and includes new requirements if licensed as a Psychological Examiner after June 30, 1991., as indicated below:

- (3) To become licensed as a Senior Psychological Examiner in Tennessee, a person who was licensed as a Psychological Examiner after June 30, 1991 must comply with the following procedures and requirements:
 - (d) Have submitted letter(s) of recommendation from Psychologist(s) with Health Service Provider designation that verifies that the applicant has completed five (5) years of health-related clinical activities from the date of issuance of a temporary license; and
 - (e) Provide verification of two hundred (200) hours of post-licensure continuing education including documentation of completion of ninety (90) formal hours and a log of the one hundred-ten (110) informal hours. The log of informal continuing education should include type of activity, nature of the training, and number of hours assigned to specific activity.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-207, 63-11-210, 63-11-215, 63-11-217, and Public Chapter 123 of the Public Acts of 2001.

Rule 1180-3-.04 Examinations—This rule amendment changes some procedures regarding computer-based testing of applicants.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-207, 63-11-209, 63-11-210, and Public Chapter 123 of the Public Acts of 2001.*

Rule 1180-3-.05 Temporary License—This rule amendment concerns the length of term for a temporary license and requests for extensions of the term length.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-210, and Public Chapter 123 of the Public Acts of 2001.*

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, 1st Floor, Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247-1010 615-532-4397.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2001. (07-28)

WILDLIFE PROCLAMATIONS

WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660

PROCLAMATION 01-15 AMENDING PROCLAMATION 01-9 WILDLIFE MANAGEMENT AREAS HUNTING SEASONS, LIMITS AND MISCELLANEOUS REGULATIONS

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following amendment to Proclamation 01-9, wildlife management areas hunting seasons, limits and miscellaneous regulations:

Section II is amended by deleting "Perryville (4)" from the list of Wildlife Management Areas open to hunting as set out in the statewide seasons.

Section II is further amended by deleting "Perryville" from the list of Wildlife Management Areas open to trapping as set out in the statewide season.

This proclamation repeals Section 7 of Proclamation No. 73, dated June 5, 1956.

Proclamation No. 01-15 received and recorded this 31st day of July, 2001. (07-32)

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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 July 2, 2001 and ending July 31, 2001.


RILEY C. DARNELL
Secretary of State

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