

TAAAR



March 15, 2002
Volume 28, Number 3

RILEY C. DARNELL
Secretary of State

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

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Department of State, Authorization No. 305084, 385 copies, March 2002. This public document was promulgated at a cost of \$ 4.10 per copy.

PREFACE

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

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

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

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

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

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

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

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

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

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

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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 8.75 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 April 2002 is 9.57 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 5.57 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 February 2002. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | EFFECTIVE DATE |
|-------|-------------|--|--------------------------|-------------|--|---|----------------|
| 02-01 | Feb 1, 2002 | 1200 Health Bureau of Health Informatics Tennessee Cancer Registry | Rulemaking Hearing Rules | New Rules | <i>Chapter 1200-7-2 Cancer Reporting System</i> 1200-7-2-.01 Purpose 1200-7-2-.02 Authority 1200-7-2-.03 Definitions 1200-7-2-.04 Participation in the Program 1200-7-2-.05 Cancer Case Reporting 1200-7-2-.06 Confidentiality 1200-7-2-.07 Release of Information 1200-7-2-.08 Request Procedure for Identifiable Data | Jerrold R. Daniels 312 Eighth Ave., N. 26th Fl TN Twr Nashville TN 37247 Phone (615) 741-1611 | April 17, 2002 |
| 02-02 | Feb 1, 2002 | 1365 Social Worker Certification and Licensure | Rulemaking Hearing Rules | Amendment | <i>Chapter 1365-1 General Rules and Regulations</i> 1365-1-.05 Procedures for Certification and Licensure | John Fitzgerald, OGC 26th Fl, TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611 | April 17, 2002 |
| 02-03 | Feb 4, 2002 | 1050 Osteopathic Examination Council of Certified Professional Midwifery | Rulemaking Hearing Rules | New Rules | <i>Chapter 1050-5 General Rules Governing Certified Professional Midwives</i> 1050-5-.01 Definitions 1050-5-.02 Scope of Practice 1050-5-.03 Reserved 1050-5-.04 Reserved 1050-5-.05 Certification Process 1050-5-.06 Fees 1050-5-.07 Application Review, Approval, and Denial 1050-5-.08 Reserved 1050-5-.09 Certification Renewal 1050-5-.10 Reserved 1050-5-.11 Inactive Status and Reactivation 1050-5-.12 Continuing Education 1050-5-.13 Professional Ethics 1050-5-.14 Reserved 1050-5-.15 Disciplinary Grounds, Actions, and Civil Penalties 1050-5-.16 Replacement Certificates 1050-5-.17 Change of Name and/or Address 1050-5-.18 Reserved 1050-5-.19 Committee Officers, Consultants, Records, and Declaratory Orders | Robert J. Kraemer OGC 26th Fl, TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611 | April 20, 2002 |

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | EFFECTIVE DATE |
|-------|--------------|--|--------------------------|------------------------|---|--|----------------|
| 02-04 | Feb 8, 2002 | 1200 Health Bureau of Health Services Nutrition Services Section | Rulemaking Hearing Rules | Repeal and New Chapter | <i>Chapter 1200-15-2 Special Supplemental Nutrition Program For Women, Infants and Children</i> 1200-15-2-.01 Definitions 1200-15-2-.02 Purpose 1200-15-2-.03 Eligibility 1200-15-2-.04 Issuance of Vouchers 1200-15-2-.05 Voucher Transactions and Redemption 1200-15-2-.06 Participant Program Violations 1200-15-2-.07 Vendor Agreements 1200-15-2-.08 Vendor Program Violations 1200-15-2-.09 Non-Discrimination 1200-15-2-.10 Appeals and Administrative Reviews | Jerrod R. Daniels OGC TN Tower, 26th Fl. 312 8th Ave N Nashville, TN 37247-0120 615-741-1611 | April 24, 2002 |
| 02-06 | Feb 1, 2002 | 0620 Finance and Administration | Proposed Rules | New Rules | <i>Chapter 0620-1-9 Policy and Procedures Governing Write-off of Accounts Receivable</i> 0620-1-9-.01 Policy Statement 0620-1-9-.02 Approvals for Write-Offs | Mark Cherpack Suite 2100, 312 8th Ave N Snodgrass TN Twr Nashville TN 37243 (615) 253-4706 | June 28, 2002 |
| 02-07 | Feb 13, 2002 | 1150 Occupational and Physical Therapy Examiners Committee of Occupational Therapy | Rulemaking Hearing Rules | Amendments | <i>Chapter 1150-2 General Rules Governing the Practice of Occupational Therapy</i> 1150-2-.02 Scope of Practice | Tracey Boyers-Heathman 26th Fl Snodgrass TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611 | April 29, 2002 |
| 02-08 | Feb 13, 2002 | 1330 Board of Respiratory Care | Rulemaking Hearing Rules | Amendments | <i>Chapter 1330-1 General Rules Governing Respiratory Care Practitioners</i> 1330-1-.15, Disciplinary Grounds, Actions, and Civil Penalties | Rachel Nelley OGC 26th Fl Snodgrass TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611 | April 29, 2002 |
| 02-11 | Feb 20, 2002 | 0120 Nursing Home Administrators | Rulemaking Hearing Rules | Amendments | <i>Chapter 1020-1 General Rules Governing Nursing Home Administrators</i> 1020-1-.05 Licensure 1020-1-.10 Examinations 1020-1-.15 Licensure Discipline, Civil Penalties, Informal Settlements, Assessment of Costs and Subpoenas | Tracey Boyers-Heathman OGC 26th Fl Snodgrass TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611 | May 6, 2002 |

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | EFFECTIVE DATE |
|-------|--------------|---|--------------------------|-------------|---|--|----------------|
| 02-12 | Feb 20, 2002 | 1370 Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists | Rulemaking Hearing Rules | Amendments | 1370-2-.15 Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs and Subpoenas | Glen Watson OGC 26th Fl., Snodgrass TN Twr., 312 8th Ave. N Nashville, TN 37247-0120 741-1611 | May 6, 2002 |
| 02-13 | Feb 20, 2002 | 0080 Agriculture Division of Animal Industries | Proposed Rules | Amendments | <i>Chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry</i> 0080-2-1-.01 Definitions 0080-2-1-.06 Horses and Other Equidae | Patricia Clark Agriculture P. O. Box 40627 Nashville, TN 37204 615-837-5093 | June 28, 2002 |
| 02-14 | Feb 20, 2002 | 0080 Agriculture Regulatory Services Division | Proposed Rules | Amendments | <i>Chapter 0080-4-9 Retail Food Store Sanitation</i> 0080-4-9-.01 General Provisions 0080-4-9-.02 Food 0080-4-9-.03 Personnel 0080-4-9-.05 Cleaning, Sanitization, And Storage Of Equipment And Utensils 0080-4-9-.06 Sanitary Facilities And Controls 0080-4-9-.07 Construction and Maintenance of Physical Facilities | Patricia Clark Agriculture P. O. Box 40627 Nashville, TN 37204 615-837-5093 | June 28, 2002 |
| 02-24 | Feb 25, 2002 | 1720 University of Tennessee Health Science Center | Proposed Rules | Amendments | <i>1720-3-2 Library Fines</i> 1720-3-2-.01 Fines | Ronald C. Leadbetter University of Tennessee Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247 | June 28, 2002 |
| 02-25 | Feb 25, 2002 | 1720 University of Tennessee Health Science Center | Proposed Rules | Amendments | <i>1720-3-4 The Registration and Conduct of Student Organizations</i> | Ronald C. Leadbetter University of Tennessee Office of General Counsel 719 Andy Holt Twr Knoxville TN 37996-0170 (865) 974-3247 | June 28, 2002 |
| 02-27 | Feb 28, 2002 | 1200 Health Health Care Facilities | Rulemaking Hearing Rules | Amendments | Chapter 1200-24-5 Review of Health Care Facility Construction Plans and Specifications 1200-24-5-.03 Fees | Peggy DePriest OGC 26th Fl TN Twr 615-741-1611 | May 14, 2002 |

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | EFFECTIVE DATE |
|-------|--------------|--|-------------------|-----------------------------|--|---|----------------|
| 02-32 | Feb 28, 2002 | 1700 Treasury Tennessee Baccalaureate Education System Trust Board | Proposed Rules | New Rule Amendments | <i>Chapter 1700-5-2</i> <i>Tennessee Baccalaureate Education System</i> <i>Trust Educational Savings Plan</i> 1700-5-2-.18 Rollovers 1700-5-2-.01 In General 1700-5-2-.04 Beneficiary Accounts 1700-5-2-.05 Contributions 1700-5-2-.08 Payments to Beneficiary 1700-5-2-.09 Change of Beneficiary and Transfer of Account Funds 1700-5-2-.10 Scholarship Recipients 1700-5-2-.11 Contract Termination and Refunds 1700-5-2-.12 Plan Termination | Mary Krause 10th Fl Andrew Jackson Bldg Nashville, TN 37243-0230 (615) 741-7063 | June 28, 2002 |
| 02-33 | Feb 28, 2002 | 1700 Treasury Tennessee Baccalaureate Education System Trust Board | Proposed Rules | New Rules Amendments | <i>Chapter 1700-5-1</i> <i>Tennessee Baccalaureate Education System</i> <i>Trust</i> 1700-5-1-.18 Rollovers 1700-5-1-.01 In General 1700-5-1-.03 Contract Acceptance 1700-5-1-.05 Purchase of Tuition Units 1700-5-1-.08 Transfer of Tuition Units 1700-5-1-.09 Scholarship Recipients 1700-5-1-.10 Contract Termination and Refunds 1700-5-1-.11 Plan Termination 1700-5-1-.17 Payments to Beneficiary | Mary Krause 10th Fl Andrew Jackson Bldg Nashville, TN 37243-0230 (615) 741-7063 | June 28, 2002 |
| 02-34 | Feb 28, 2002 | 0080 Agriculture Division of Animal Industries | Proposed Rules | New rules Amendments | <i>Chapter 0080-2-10</i> <i>Regulations Concerning Horses and Other</i> <i>Equidae</i> 0080-2-10-.06 Laboratories Conducting Testing for Equine Infectious Anemia 0080-2-10-.01 Test of Public Sale Horses | Patricia Clark Agriculture P. O. Box 40627 Nashville, TN 37204 615-837-5093 | June 28, 2002 |

ANNOUNCEMENTS

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

Applications will be heard at the April 17, 2002 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 February 1, 2002. 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

Henry County Medical Center
301 Tyson Avenue
P.O. Box 1030
Paris (Henry Co.), TN 38242
Thomas H. Gee – (731)—644-8537
CN0201-001

The construction of an approximate 89,200 square foot building addition which will include a new ten (10) bed obstetrical unit, a replacement twenty-nine (29) bed acute care unit, admissions department, business office, education center, other support areas, and shelled space for future surgery and beds space. There will be no change to the licensed bed capacity of the Hospital.

\$ 17,984,014.00

Methodist Healthcare – Brownsville Hospital
2545 North Washington Avenue
Brownsville (Haywood Co.), TN 38012
Jane Lucchesi – (901)—516-0679
CN0201-002

The discontinuance of obstetric services at Methodist Healthcare-Brownsville Hospital, located at 2545 North Washington Avenue, Brownsville, Tennessee. If approved, the ten (10) licensed beds that are currently in five (5) LDRP rooms will be converted to ten (10) medical/surgical beds. This will not affect the licensed bed capacity of the hospital.

\$ 13,000.00

NAME AND ADDRESS

DESCRIPTION

Methodist Healthcare - Central Hospital
1265 Union Avenue
Memphis (Shelby Co.), TN 38104
Jane Lucchesi – (901)—516-0679
CN0201-003

The addition of 63 acute care beds at Methodist Healthcare – Central Hospital located at 1265 Union Avenue, Memphis, Tennessee. The project will involve renovation and relocation of the following existing services: Wound Care, Sleep Lab, Urodynamics and Neurophysiology services. Part of the existing space to be renovated includes space currently occupied by 58 psychiatric beds identified in pending CN0111-089 for relocation to 135 Pauline Street North, Memphis, Tennessee. If approved, the licensed bed complement will increase from 652 to 715.

\$ 3,049,505.00

Advanced Imaging of Nashville
601 Grassmere Park Drive
Nashville (Davidson Co.), TN 37211
Edwin W. Day – (615)—952-2297
CN0201-004

The establishment of an outpatient diagnostic center and the initiation of magnetic resonance imaging services to be located at 601 Grassmere Park Drive, Nashville, Tennessee.

\$ 2,125,000.00

Tennessee Pain Surgery Center
Adjoining the southeast side of
5801 Crossings Boulevard
Antioch (Davidson Co.), TN 37013
John Wellborn – (615)—665-2022
CN0201-005

The establishment of an ambulatory surgical treatment center limited to pain management at a location that adjoins the property of The Pain Management Group at 5801 Crossings Boulevard in Antioch, Tennessee. The project will consist of a 10,000 SF facility with one (1) operating room and three (3) procedure rooms.

\$ 4,508,400.00

Gateway Medical Center
1771 Madison Street
Clarksville (Montgomery Co.), TN 37043
John Wellborn – (615)—665-2022
CN0201-006

The initiation of mobile Positron Emission Tomography (PET) services one day per week at the main hospital campus, 1771 Madison Street, Clarksville, Tennessee.

\$ 498,785.00

*Centennial Medical Center
345 23rd Avenue North
Nashville (Davidson Co.), TN 37203
John Wellborn – (615)—665-2022
CN0201-007

The relocation of Centennial Surgery Center's existing ambulatory surgery center facility at 340 23rd Avenue North in Nashville, Tennessee to leased space in a medical office building being constructed at 345 23rd Avenue North. There will be no changes to the existing services of this ambulatory surgery treatment center.

\$ 8,944,805.00

| NAME AND ADDRESS | DESCRIPTION |
|--|--|
| *Regional Medical Center at Memphis (The MED) 930 Madison Avenue, Suite C-1 Memphis (Shelby Co.), TN 38103 John Wellborn – (615)—665-2022 CN0201-008 | The acquisition and operation of a second magnetic resonance imaging (MRI) unit in leased space at 930 Madison Avenue, Suite C-1, Memphis, Tennessee. The MED will acquire an existing 1.5 T GE closed bore MRI unit previously operated by Baptist Memorial Hospital. The satellite MRI service will be provided both to inpatients and outpatients, under the hospital's licensure at the former Baptist Hospital location. \$ 2,138,820.00 |
| Takoma Adventist Hospital 401 Takoma Avenue Greeneville (Greene Co.), TN 37743 E. Graham Baker – (615)—383-3332 CN0201-009 | The acquisition of a short-bore 1.5 Tesla magnetic resonance imaging (MRI) scanner to be installed in a newly-constructed room at Takoma Adventist Hospital located at 401 Takoma Avenue, Greeneville, Tennessee. This unit, if approved, will replace the existing mobile MRI service currently in use at the hospital. \$ 2,024,240.00 |
| The West Clinic, P.C. 100 North Humphreys Boulevard Memphis (Shelby Co.), TN 38120 Jerry W. Taylor – (615)—726-1200 CN0201-010 | The establishment of an Outpatient Diagnostic Center (ODC), initiation of Positron Emission Tomography (PET) imaging services and the acquisition of PET imaging equipment to be located at The West Clinic, P.C., 100 North Humphreys Boulevard, Memphis, Tennessee. \$ 2,825,789.00 |

**BOARD OF OCCUPATIONAL AND PHYSICAL THERAPY EXAMINERS - 1050
COMMITTEE OF PHYSICAL THERAPY**

**PETITION FOR DECLARATORY ORDER
NOTICE OF HEARING
AND
NOTICE TO POTENTIALLY INTERESTED PERSONS**

Yorick A. Wijting, P.T. has filed a Petition for Declaratory Order pursuant to T.C.A. §4-5-224 and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Rule 1360-4-1-.07.

1. Petitioner's Name: Yorick A. Wijting, P.T.
6647 Declaration Drive
Hixson, Tennessee 37343
(423) 843-9973

Docket Number: 17.22-023256A

2. Petitioner's Attorney: N/A

Address: N/A

Phone Number: N/A

3. Organization, if any, that the Petitioner represents:

None

4. Provide a statement of the facts which led to the filing of this petition. Include all facts you believe necessary for the agency to make a decision in this matter:

a. I have been trained in the use of dry needling as a treatment technique for soft tissue disorders, primarily trigger points in muscle tissue. This technique is also called intramuscular stimulation. I wish to confirm that I may utilize this in Tennessee under our current practice act. My training occurred in South Africa in 1996.

5. Provide a summary of the relief you are requesting including the specific nature of the requested order and the conclusions you would like the agency to reach at the conclusion of the declaratory process.

a. I would like written confirmation that I am practicing within my scope of practice as a physical therapist in Tennessee when using dry needling. The technique involves the use of small needles (also used in acupuncture) which are inserted into muscle tissue.

6. Citation to the statute, rule or order which is the subject of the petition.

a. Practice Act (PT) (See T.C.A. §§ 63-13-101 et seq.)

7. State how the statute, rule and/or order cited above specifically and directly produces an effect or result upon you:

a. See above.

A hearing has been scheduled for May 3, 2002 at 9:00 a.m. before the Board of Occupational and Physical Therapy Examiners, Committee of Physical Therapy in the Cumberland Room of the Cordell Hull Building, Ground Floor, 425 5th Avenue North, Nashville, Tennessee 37247.

If you have questions, you may contact the Petitioner, Yorick A. Wijting, P.T., at the address and phone number listed at the beginning of this notice.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 11th day of February, 2002. (02-05)

Submitted for Publication by:

Michelle VanDeRee, BPR# 015060
Deputy General Counsel
Tennessee Department of Health

DEPARTMENT OF TRANSPORTATION - 1680

The Department of Transportation rules in the Public Necessity section of the February 15, 2002 Tennessee Administrative Register are Public Necessity rules effective March 1, 2002 for 165 days through August 13, 2002. The Secretary of State regrets the error. The Chapter of the rules is 1680-12-1, Railroad Grade Crossing Standards.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0940 - Department of Mental Health and Developmental Disabilities - Office of Licensure - Emergency Rule covering mental health and developmental disability two- and three-bed residential facilities accommodating individuals who cannot evacuate the residence without physical assistance - Chapter 0940 Life Safety Licensure Rules, 12 T.A.R. (December 2001) - Effective November 21, 2001 through May 5, 2002. (11-29)
- 1340 - Department of Safety - Division of Driver License Issuance - Emergency Rules regarding verification of residence and identification for those seeking driver licenses upon initial issuance, Chapter 1340-1-13 Classified and Commercial Driver Licenses, 11 T.A.R. (November 15, 2001) - Effective October 31, 2001 through April 14, 2002. (10-22)
- 1700 - Department of Treasury - TN Baccalaureate Education System Trust Board - Emergency Rules dealing with compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001, chapter 1700-5-1 TN Baccalaureate Education System Trust, 2 T.A.R. (February 15, 2002) - Effective January 15, 2002 through June 29, 2002. (01-29)
- 1700 - Department of Treasury - TN Baccalaureate Education System Trust Board - Emergency Rules dealing with compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001, Chapter 1700-5-2 TN Baccalaureate Education System Trust Educational Savings Plan, 2 T.A.R. (February 15, 2002) - Effective January 15, 2002 through June 29, 2002. (01-29)

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PROPOSED RULES

DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF ANIMAL INDUSTRIES

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

Presented herein are proposed amendments of Division of Animal Industries, Department of Agriculture submitted pursuant to T.C.A. §44-5-202 in lieu of a rulemaking hearing. It is the intent of the Division of Animal Industries, Department of Agriculture 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 amendments are published. Such petition to be effective must be filed with the Department of Agriculture, 440 Hogan Road, Nashville, Tennessee 37220, and the Department of State, 8th Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

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

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0080-2-1-.01 Definitions is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

0080-2-1.01 DEFINITIONS

- (1) For the purpose of these rules, the following definitions shall apply unless otherwise indicated herein.
 - (a) Accredited Veterinarian – An accredited veterinarian as defined in 9 C.F.R. Section 160.
 - (b) Approved Livestock Market – A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled for sale or sale purposes, and which has been approved by USDA-APHIS-VS and the appropriate state animal health official in accordance with 9 C.F.R. Sections 76 and 78.
 - (c) Approved Slaughter Establishment – Any slaughtering establishment operating under the provisions of the Federal Meat Inspector Act (21 U.S.C. 601 et seq.).
 - (d) Breeding Swine – Shall include all swine other than feeder swine or slaughter swine.

- (e) Certified Brucellosis-Free Herds – A herd of cattle which has qualified for such status in accordance with the Uniform Methods and Rules (UM&R) and/or 9 C.F.R. Section 78.
- (f) Change of Ownership – Ownership changing from one individual or entity to another, either through selling, bartering, trading, or donating to another individual or entity.
- (g) Classification of States – The classification of “Free”, “Class A”, “Class B” and “Class C” states shall be as set forth in the Uniform Methods and Rules (UM&R) and/or Title 9 C.F.R. Section 78.
- (h) Dairy and Breeding Cattle – Shall include all intact male and female cattle other than feeder cattle or slaughter cattle.
- (i) Department – The Tennessee Department of Agriculture.
- (j) Domestic Animals – Shall include cattle, bison, horses, mules, asses, sheep, goats, swine, dogs, cats and avian species.
- (k) Entry Permits – A verbal or written pre-movement authorization for entry of livestock into Tennessee, issued by the Tennessee State Veterinarian or his agent.
- (l) Exposed Animal (Brucellosis) – Any animal, except a brucellosis reactor animal, that is part of a herd known to be affected or that has been in contact with a brucellosis reactor animal in marketing or other channels for a period of twenty-four (24) hours or for a period of less than twenty-four (24) hours if such brucellosis reactor animal has aborted or calved within, the past thirty (30) days or has a vaginal discharge.
- (m) Farm of Origin (Cattle) – A farm or other premises where the cattle were born or have been kept for not less than four (4) months prior to the date of shipment, and which has not been used within such time, to assemble, buy, or sell cattle from other sources.
- (n) Farm of Origin (Swine) – A farm where the swine were born, or on which they have resided for at least ninety (90) consecutive days immediately prior to shipment, and which has not been used within such time to assemble, buy, or sell swine from other sources.
- (o) Feeder Cattle – Cattle which are intended for the sole purpose of feeding or grazing prior to slaughter and are less than eighteen (18) months of age as evidenced by the absence of eruption of the first permanent incisor teeth and are not parturient or post parturient, including steers and spayed heifers of any age.
- (p) Feeder Swine – Swine that are less than four (4) months of age and are intended for feeding purposes prior to slaughter.
- (q) Herd – A herd is all animals under common ownership or which have been in physical contact with each other within the preceding twelve (12) months whether located on one or more premises.
- (r) Negative – The designation of an animal as “Negative” shall be as defined in the Uniform Methods and Rules (UM&R) and/or 9 C.F.R. Section 78, based on recommended serologic or other approved tests for brucellosis.
- (s) Official Backtag – Backtags approved by the Department or USDA-APHIS-VS.

(t) Official Health Certificate

1. An official health certificate is a legible record on a form adopted and approved for such use by the appropriate animal health official of the State of origin, prepared by an accredited veterinarian of the State of origin, certifying to the health of the animal(s) described thereon. Legal requirements shall not be met until an approved copy is forwarded by the appropriate animal health official of the State of origin to the Tennessee State Veterinarian.
2. The health certificate shall list the name and address of the consignor and consignee and shall also reflect the origin and final destination of the animals if different. It shall include an accurate description sufficient for individual identification of the animal(s); this may include: age, sex, breed, tags, tattoos, and/or brands. It shall indicate the health status of the animals listed, including dates and results of required tests and dates of pertinent vaccinations.
3. Health certificates shall be void after thirty (30) days from date of issuance. No health certificate shall be issued except in compliance with all import requirements of the State of Tennessee, unless otherwise specifically authorized by the Tennessee State Veterinarian.

(u) Official Proof of Test – Any documentation approved by the state and federal animal health officials which bears permanent individual identification of an animal and certification by an accredited veterinarian or full-time regulatory animal health employee that the animal has been tested for a particular disease.

(v) Official Seal – A serially numbered metal or plastic strip that is self-locking and cannot be reused if opened, and which is applied by a representative of the USDA-APHIS-VS or State Veterinarian.

(w) Official Test – Official tests for specifically named diseases as referred to herein shall be such tests as are recognized as official by the appropriate animal health official of the state of origin and the USDA-APHIS-VS. The date of the test shall be the date the sample is taken from the animal.

(x) Official Vaccinate – Any animal vaccinated for brucellosis and identified in accordance with the Uniform Methods and Rules (UM&R) and applicable section of Title 9 C.F.R.

(y) Parturient – Visibly pregnant; commonly referred to as “springing”.

(z) Person – An individual, corporation, association, partnership, or other legal entity.

(aa) Post Parturient – Having already given birth.

(bb) Pseudorabies-monitored Feeder Pig Herd – A percentage negative test for Pseudorabies in the herd of breeding animals over six (6) months of age to be conducted at least once a year at a rate to be determined by the state veterinarian but at a rate not less than:

| | |
|-------------|---------------------|
| 1-5 sows | test all |
| 6-10 sows | test 6 |
| 11-35 sows | test 10 |
| 36 and over | test 30% or 30 head |

(cc) Qualified Pseudorabies Negative Herd – A herd of swine which has qualified for such status in accordance with 9 C.F.R. Section 85.

- (dd) Quarantined Feedlot – A confined area approved in accordance with Uniform Methods and Rules (UM&R) and/or 9 C.F.R. Section 78.
- (ee) Reactor – The designation of an animal as a “reactor” shall be as defined in the Uniform Methods and Rules, (UM&R), and/or 9 C.F.R. Section 78 based on recommended serologic or other approved tests for brucellosis.
- (ff) Shipping Permit – Except for the term “Entry Permit”, shall mean a VS Form 1-27 or other official document approved for such use required to accompany livestock where movement is restricted or as may be defined in the Uniform Methods and Rules (UM&R) and/or applicable sections of Title 9 C.F.R.
- (gg) Slaughter Cattle – Any cattle shipped directly to an approved slaughter establishment for slaughter within five (5) days. Note: Designation of slaughter cattle is determined solely by the fact that the animals are consigned and shipped directly to an approved slaughter establishment. This designation is not affected by origin, type, condition, health, or any other characteristic of the animal.
- (hh) Slaughter Swine – Swine of any age, breed, or sex consigned and transported directly to an approved slaughter establishment for slaughter within five (5) days, or to an approved swine market for sale to slaughter.
- (ii) Suspect – The designation of an animal as a “Suspect” shall be as defined in the Uniform Methods and Rules (UM&R) and/or 9 C.F.R. Section 78 based on recommended serologic or other approved tests for brucellosis.
- (jj) Transportation Document – Any document accompanying the shipment, such as a health certificate, waybill, bill-of-sale, bill-of-lading, cargo manifest, shipping permit or an invoice that lists:
 - 1. the point from which the animals are moved;
 - 2. the destination of the animals;
 - 3. the number and kind of animals covered by the document; and
 - 4. the name and address of the owner or shipper.
- (kk) USDA-APHIS-VS – United States Department of Agriculture, Animal and Plant Health Inspection Services – Veterinary Services.
- (ll) Uniform Methods and Rules (UM&R) – The recommended Rules of Brucellosis Eradication as published by USDA-APHIS-VS.
- (mm) Validated Brucellosis-Free Herd of Swine – A herd of swine which has qualified for such status in accordance with the Uniform Methods and Rules (UM&R) and/or applicable section of 9 C.F.R. Section 78.

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

Paragraph (3) of Rule 0080-2-1-.06 Horses and Other Equidae is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (3) Equidae consigned to an approved livestock market sale may enter Tennessee without a current Equine Infectious Anemia test provided they are shipped directly to such market with a transportation document.

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

The proposed rules set out herein were properly filed in the Department of State 20th day of February, 2002, 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 June, 2002. (02-13)

**THE TENNESSEE DEPARTMENT OF AGRICULTURE - 0080
DIVISION OF ANIMAL INDUSTRIES**

**CHAPTER 0080-2-10
REGULATIONS CONCERNING HORSES AND OTHER EQUIDAE**

Presented herein is the proposed new rule and amendments of Division of Animal Industries, Department of Agriculture submitted pursuant to T.C.A. §44-5-202 in lieu of a rulemaking hearing. It is the intent of the Division of Animal Industries, Department of Agriculture 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 new rule and amendments are published. Such petition to be effective must be filed with the Department of Agriculture, 440 Hogan Road, Nashville, Tennessee 37220, and the Department of State, 8th Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the new rule and amendments, or submitted by a municipality which will be affected by the new rule and/or 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 new rule and amendments, contact: Dr. Ronald B. Wilson, State Veterinarian, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5120.

The text of the proposed new rule and amendments are as follows:

NEW RULES

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0080-2-10-.06 Laboratories Conducting Testing for Equine Infectious Anemia

0080-2-10-.06 LABORATORIES CONDUCTING TESTING FOR EQUINE INFECTIOUS ANEMIA

- (1) Laboratories conducting testing for Equine Infectious Anemia in Tennessee must be certified as required by the provisions 9 C.F.R. § 75.4 and approved by the Commissioner of Agriculture or his designated representative.

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

AMENDMENTS

Rule 0080-2-10-.01 Test of Public Sale Horses is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

0080-2-10-.01 EQUINE INFECTIOUS ANEMIA TEST REQUIREMENTS FOR TENNESSEE HORSES

- (1) Test for Change of Ownership – All horses or other Equidae except foals less than six (6) months of age in the company of their negative dam must have a negative official Equine Infectious Anemia test conducted within six (6) months prior to sale. This test is not required for equine entering an approved livestock market for sale. Equine Infectious Anemia testing shall be the responsibility of the seller.
- (2) Approved Livestock Market Testing – All horses or other Equidae offered for sale at approved livestock markets shall have evidence of a negative official Equine Infectious Anemia test conducted within six (6) months, or shall have blood collected for testing prior to sale. Equidae sold with a results-pending market test shall be confined at the market, or the buyer shall sign an agreement to maintain such equine at a specified location until test results are known. Equidae testing negative may move in normal trade channels.

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

The proposed rules set out herein were properly filed in the Department of State 28th day of February, 2002, 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 June, 2002. (02-34)

**DEPARTMENT OF AGRICULTURE - 0080
REGULATORY SERVICES DIVISION****CHAPTER 0080-4-9
RETAIL FOOD STORE SANITATION**

Presented herein are proposed amendments to the Retail Food Store Sanitation Rules, Department of Agriculture submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Regulatory Services Division, Tennessee Department of Agriculture 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 amendments are published. Such petition to be effective must be filed with the General Counsel of the Department of Agriculture, P.O. Box 40627, Nashville, TN 37204, and in the Department of State, Department of State, 8th Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or on 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 amendments, contact: Jimmy Hopper, Director, Regulatory Services, Department of Agriculture, Ellington Agricultural Center, 615-837-5150.

The text of the proposed amendments as follows:

AMENDMENTS

Rule 0080-4-9-.01 General Provisions is amended by deleting the subparagraph (1)(p) in its entirety; so that the new subparagraph shall read:

- (p) Potentially hazardous food” means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: foods that have a pH level of 4.6 or below or a water activity (aW) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

Authority: T.C.A. §§53-8-101 et seq. and 4-3-203.

Rule 0080-4-9-.02 Food is amended by deleting paragraph (2) in its entirety so that the amended paragraph (2) shall read:

(2) Food Protection.

(a) General

1. At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling, flooding, draining, and overhead leakage or condensation, or other agents of public health significance. Hermetically sealed packages shall be handled so as to maintain product and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have been returned to, or are being detained by, the retail food store because of spoilage, container damage, or other public health considerations, shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the regulatory authority.
2. Emergency Occurrences. The person in charge of a retail food store that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.

(b) Food Temperatures. Except as otherwise provided in these rules, potentially hazardous food shall be maintained:

1. At 41°F(=5°C) or below or 140°F(=60°C) or above at all times except as otherwise provided in these rules.
2. At 45°F(=7°C) or below in existing refrigeration equipment that is incapable of maintaining the food at 41°F(=5°C) or less, if
 - (i) the equipment is in place and in use in the Retail Food Store, and

- (ii) within five (5) years from the effective date of these rules, the equipment is upgraded or replaced to maintain food at a temperature of 41°F(=5°C) or less.
3. In any event, five (5) years from the effective date of these rules, all potentially hazardous food shall be maintained at 41°F(=5°C) or below, or 140°F(=60°C) or above at all times.

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.02 Food is amended by deleting paragraph (3) subparagraph (b) part 2 in its entirety so that the amended 0080-4-9-.02(3)(b)2 shall read:

2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 41°F (=5°C) or below. Potentially hazardous foods of large volumes or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 41°F(=5°C) or below unless maintained in accordance with the hot storage requirements of this code.

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.02 Food is amended by deleting paragraph (4) subparagraph (g) part 1 in its entirety so that the amended 0080-4-9-.02(4)(g)1 shall read:

1. In refrigerated units at a temperature not to exceed 41°F(=5°C); or

Rule 0080-4-9-.02 Food is amended by deleting paragraph (5) subparagraph (a) in its entirety so that the amended 0080-4-9-.02(5)(a) shall read:

- (a) Potentially Hazardous Foods. Potentially hazardous foods shall be held at an internal temperature of 41°F(=5°C) or below or at an internal temperature of 140°F(60°C) or higher during display, except that rare roast beef, which is offered for sale hot, shall be held at a temperature of at least 130°F(=55°C).

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.03 Personnel is amended by deleting paragraph (2) subparagraph (a) in its entirety so that the amended 0080-4-9-.03(2)(a) shall read:

- (a) Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, using the toilet, and again upon returning to work after using the toilet; before and after handling raw meat, or raw poultry, or raw seafood; and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.05 Cleaning, Sanitization, And Storage Of Equipment And Utensils is amended by deleting paragraph (1) subparagraph (c) part 1 in its entirety so that the amended 0080-4-9-.05(1)(c)1 shall read:

1. For manual cleaning and sanitizing of equipment and utensils, a sink with three compartments shall be provided and used. Sink compartments shall be large enough to accommodate the immersion of most equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Where immersion in sinks is impracticable (e.g., because equipment is too large), equipment and utensils shall be cleaned and sanitized manually or by pressure spray methods.

Rule 0080-4-9-.05 Cleaning, Sanitization, And Storage Of Equipment And Utensils is further amended by deleting paragraph (1) subparagraph (c) part 6 in its entirety and renumbering the remaining parts as required.

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.06 Sanitary Facilities And Controls is amended by deleting paragraph (4) subparagraph (a) in its entirety so that the amended 0080-4-9-.06(4)(a) shall read:

- (a) Toilet Installation. Toilet facilities shall be installed according to law, shall be at least one but not less than the number required by law, shall be conveniently located, and shall be accessible to employees at all times. In establishments constructed or extensively altered after the effective date of these rules, toilet facilities for each sex shall be provided for the use of patrons. Employees and patrons may use the same facilities. Provided, however, establishments with a seating capacity of sixteen (16) or less are exempted from providing toilet facilities for the use of patrons, unless otherwise required by state statute.

Authority: T.C.A. §§53-8-101 et seq.

Rule 0080-4-9-.07 Construction and Maintenance of Physical Facilities is amended by deleting paragraph (8) subparagraph (f) part 1 in its entirety so that the amended 0080-4-9-.07(8)(f)1 shall read:

1. Live animals, with the exception of service dogs accompanying disabled persons, shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustaceans, shellfish, or fish in aquariums.

Live or dead fish bait shall be stored separately from food or food products.

Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons.

Authority: T.C.A. §§53-8-101 et seq.

The proposed rules set out herein were properly filed in the Department of State 20th day of February, 2002, 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 June, 2002. (02-14)

DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620

CHAPTER 0620-1-9

POLICY AND PROCEDURES GOVERNING WRITE-OFF OF ACCOUNTS RECEIVABLE

Presented herein are proposed rules of the Department of Finance and Administration 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 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 the Department of Finance and Administration, Office of the General Counsel, Suite 2100, William R. Snodgrass Tennessee Tower located at 312 8th Avenue North, Nashville, Tennessee 37243 and in the Department of State, 8th floor, William R. Snodgrass Tennessee Tower, 312 8th 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 this proposed rule, contact: April Woodruff, Office of the General Counsel, Department of Finance and Administration, Suite 2100, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243, (615) 741-0320.

The text of the proposed rules is as follows:

NEW RULES

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0620-1-9-.01. Policy Statement

0620-1-9-.02 Approvals for Write-Offs

0620-1-9-.01. POLICY STATEMENT

The General Assembly, in Tennessee Code Annotated Section 4-4-120, authorized the Commissioner of Finance and Administration and the Comptroller of the Treasury to establish procedures for the write-off of uncollectible accounts receivable by all state agencies, departments, and institutions which charge the public, create a debt to the state, and maintain accounts receivable. These rules, which have been promulgated by the Department of Finance and Administration and concurred in by the Comptroller, set forth the write-off procedures. These rules recognize that certain amounts of bad debt will occur when accounts receivable are established. Furthermore, in the case of certain accounts receivable it is in the best interests of the State to write off such accounts receivable rather than pursue collection efforts.

Authority: T.C.A. §§4-5-202,4-4-120.

0620-1-9-.02 APPROVALS FOR WRITE-OFFS

- (1) For write-offs of accounts of five thousand dollars (\$5,000) or greater, or accounts aggregating to twenty-five thousand dollars (\$25,000) or greater, the agency, department or institution shall obtain written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.

- (a) The approval request must describe the efforts used to collect the debt and must demonstrate that established collection policies were utilized.
 - (b) Approval requests shall be submitted by the agency, department or institution to the Division of Accounts, Department of Finance and Administration.
- (2) Write-offs of accounts less than five thousand dollars (\$5,000) or accounts aggregating less than twenty five thousand dollars (\$25,000) may be authorized by the head of the agency, department or institution. Such accounts may only be written off if the accounts have proven to be uncollectible based on established collection policies.
 - (3) In some exceptional cases it may be in the best interest of the state and/or more cost effective to write-off a receivable without pursuing collection efforts. The write-off of an account without collection efforts of up to five hundred dollars (\$500) or accounts aggregating up to two thousand dollars (\$2,000) may be authorized by the head of the agency, department or institution. Documentation should be prepared of the circumstances warranting the write-off. The write-off of accounts without collection efforts in greater amounts shall be through written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.
 - (4) The Director of Payroll, Division of Accounts, Department of Finance and Administration may write off payroll overpayments to employees of twenty-five dollars (\$25.00) or less.
 - (5) The Division of Accounts of the Department of Finance and Administration may develop procedures, consistent with these rules, for the submission and processing of write-off requests.

Authority: T.C.A. §§4-5-202,4-4-120.

The proposed rules set out herein were properly filed in the Department of State on the 1st day of February, and pursuant to the instructions set out above, and in the absence of the filing of a petition for a rulemaking hearing, will become effective on the 28th day of June, 2002. (02-06)

THE UNIVERSITY OF TENNESSEE - 1720
THE UNIVERSITY OF TENNESSEE
HEALTH SCIENCE CENTER

1720-3-2
LIBRARY FINES

Presented herein are proposed amendments of The University of Tennessee submitted pursuant to Tennessee Code Annotated, Section 4-5-202, in lieu of a rulemaking hearing. It is the intent of The University of Tennessee to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Room 719, Andy Holt Tower, The University of Tennessee, Knoxville, Tennessee 37996-0170, and in the Department of State, 8th Floor, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

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

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1720-3-2-.01 is amended by deleting the current language and substituting new language so that, as amended, the rule reads:

1720-3-2-.01 FINES

- (1) Books - \$0.50 cents per day, per item (with a two-day grace period before fines accrue).
- (2) Reserve books - \$1 for the first hour after they are due (10 a.m.) and \$0.50 per hour for each successive hour (no grace period).
- (3) Bound journals - \$0.50 cents per day, per item (with a two-day grace period before fines accrue).
- (4) Unbound journals - \$1 per day (with a two-day grace period before fines accrue).
- (5) Study carrel keys - \$5 per day for each day after the key is due at the Library.
- (6) When fines have accumulated to \$10, borrowing privileges are suspended until fines are paid.
- (7) All damage to books beyond reasonable wear and all losses should be reported to the Library by the borrower. Arrangements will then be made for the borrower to pay for the repair or replacement of the material.

Authority: T.C.A. §49-9-209(e).

The proposed rules set out herein were properly filed in the Department of State on the 25th day of February, 2002, 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 June, 2002. (02-24)

THE UNIVERSITY OF TENNESSEE - 1720
THE UNIVERSITY OF TENNESSEE
HEALTH SCIENCE CENTER

1720-3-4

THE REGISTRATION AND CONDUCT OF STUDENT ORGANIZATIONS

Presented herein are proposed amendments of The University of Tennessee submitted pursuant to Tennessee Code Annotated, Section 4-5-202, in lieu of a rulemaking hearing. It is the intent of The University of Tennessee to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Room 719, Andy Holt Tower, The University of Tennessee, Knoxville, Tennessee 37996-0170, and in the Department of State, 8th Floor, William R. Snodgrass Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

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

The text of the proposed amendments is as follows:

AMENDMENTS

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

- (c) The decision of the Office of Student Life may be appealed to the Vice Chancellor for University Relations.

Rule 1720-3-4-.02 Student Organization Registration (1)(d) is amended by deleting "Associate Vice President for Administration" and substituting "Vice Chancellor for University Relations" so that, as amended, the subparagraph reads:

- (d) The Vice Chancellor for University Relations will review the appeal and advise the Office of Student Life of his decision.

Rule 1720-3-4-.08 Denial of Registration (2)(f) is amended by deleting "Vice Chancellor for Student Affairs" and substituting "Vice Chancellor for University Relations" so that, as amended, the subparagraph reads:

- (f) If the SGAEC determines that registration should not be granted, it shall issue a written report, a copy of which must be given to the organization, explaining the reasons for its negative recommendations to the Vice Chancellor for University Relations.

Authority: T.C. A. §49-9-209(e)

The proposed rules set out herein were properly filed in the Department of State on the 25th day of February, 2002, 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 June, 2002. (02-25)

THE TREASURY DEPARTMENT - 1700
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD

CHAPTER 1700-5-1
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST

Presented herein are proposed rules and amendments of the Board of Trustees of the Tennessee Baccalaureate Education System Trust 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 the Tennessee Baccalaureate Education System located in Suite 1340 of the 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

1700-5-1-.18 Rollovers.

1700-5-1-.18 ROLLOVERS.

- (1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may rollover all or a portion of the funds in the beneficiary's account to an account established for another beneficiary under the educational savings plan as defined in Rule 1700-5-1-.01(2)(h) or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the beneficiary to whose account the funds are being transferred is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k).
- (2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may also rollover all or a portion of the funds in the beneficiary's account to an account established for the same beneficiary under the educational savings plan as defined in Rule 1700-5-1-.01(2)(h) or under another qualified tuition program established under Section 529 of the Internal Revenue Code.
- (3) Conditions. Any rollover under this Paragraph is subject to the following conditions:
 - (a) The purchaser makes a written rollover request to the Board on such forms as may be prescribed by the Board;

- (b) Prior to honoring the rollover request, the Board may require the purchaser to establish that the plan or program to which the funds are being transferred is a qualified plan or program as defined in Paragraphs (1) and (2) above; and
- (c) Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code.
- (4) Rollover Amount. The amount payable pursuant to a rollover request shall equal (i) the total purchase price of all the tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the transfer is made, multiplied by the number of tuition units in the beneficiary's account that are being transferred pursuant to the rollover request, (iii) minus any transfer fee charged by the Board pursuant to Rule 1700-5-1-.13 above. Notwithstanding this Paragraph, the amount payable on account of any tuition units being transferred pursuant to a rollover request that were purchased less than two (2) full years prior to the rollover request shall equal the total purchase price paid for those units, minus any transfer fee charged by the Board pursuant to Rule 1700-5-1-.13.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14) and 49-7-809(a)(8).

AMENDMENTS

Table of Contents is amended by deleting the figures and words "1700-5-1-.08 Transfer of Tuition Units" and by substituting instead the figures and words "1700-5-1-.08 Change of Beneficiary and Transfer of Tuition Units".

Authority: T.C.A. §§49-7-805(16), 49-7-805(8), 49-7-805(13) and 49-7-809(a)(2).

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(e) in its entirety and by substituting instead the following:

- (e) "Beneficiary's appointee" means the person who is named in the contract by the purchaser to exercise the rights of the beneficiary under the contract if the beneficiary is a minor, dies or is legally incompetent. The beneficiary's appointee may be the same person as the purchaser or the purchaser's appointee. The purchaser may change the designation at any time in writing to the Board.

Authority: T.C.A. §§49-7-805(16) and 49-7-809(a)(10).

1700-5-1-.01 In General is amended by deleting from Subparagraph (2)(g) the word and figures "Rule 1700-5-1-.02(m)" and by substituting instead the word and figures "Rule 1700-5-1-.01(2)(m)" so that, as amended, the Subparagraph shall read:

- (g) "Contract" means an educational services plan tuition contract entered into under T.C.A. § 49-7-807 by the Board and a purchaser to provide for the payment of tuition and "other educational costs", as such term is defined in Rule 1700-5-1-.01(2)(m) below.

Authority: T.C.A. §§49-7-805(16) and 49-7-802(6).

1700-5-1-.01 In General is amended by adding to Subparagraph (2)(h) the punctuation and words ", associations, corporations, trusts and other organized entities" immediately after the word "individuals" in the first sentence thereof so that, as amended, the Subparagraph shall read:

- (h) “Educational savings plan” means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a purchaser for a designated beneficiary that entitles the beneficiary to apply such contributions and earnings thereon to the payment of that beneficiary’s tuition and other qualified postsecondary education expenses as set forth in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the educational savings plan are set forth in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§49-7-805(16), 49-7-802(3) and 49-7-808.

1700-5-1-.01 In General is amended by adding to Subparagraph (2)(i) the punctuation and words “, associations, corporations, trusts and other organized entities” immediately after the word “individuals” in the first sentence thereof so that, as amended, the Subparagraph shall read:

- (i) “Educational services plan” means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary’s tuition and other educational costs.

Authority: T.C.A. §§49-7-805(16), 49-7-802(4) and 49-7-807.

1700-5-1-.01 In General is amended by adding immediately after the word and punctuation “sister,” in Subparagraph (2)(k) thereof the words and punctuation “first cousin,” so that, as amended, the Subparagraph shall read:

- (k) “Member of the family” means the brother, sister, half brother, half sister, legally adopted brother, legally adopted sister, first cousin, niece or nephew of the original beneficiary, or such other person as may be defined as a “member of the family” under the sections of the Internal Revenue Code which are applicable to the program.

Authority: T.C.A. §§49-7-805(16), 49-7-805(13) and 49-7-809(a)(2).

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(m) in its entirety and by substituting instead the following:

- (m) “Other educational costs” means fees and the costs of books, supplies and equipment required for the enrollment or attendance of the beneficiary at the institution of higher education where the beneficiary is enrolled. “Other educational costs” also means the costs of room and board, as defined in Rule 1700-5-1-.01(2)(s) below, incurred while the beneficiary is enrolled in an institution of higher education on at least a half-time basis and expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with the enrollment or attendance of the special needs beneficiary at the institution of higher education where the beneficiary is enrolled.

Authority: T.C.A. §§49-7-805(16), 49-7-802(6), 49-7-803, 49-7-805(14) and 49-7-807.

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(n) in its entirety and by substituting instead the following:

- (n) “Permanent disability” means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a permanent disability unless the individual furnishes proof of the existence thereof from a health care professional

in such form and manner as the Board may require. The Board must approve any finding of a permanent disability.

Authority: *T.C.A. §§49-7-805(16), 49-7-809 and 49-7-811.*

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(p) in its entirety and by substituting instead the following:

- (p) “Purchaser” means an individual, association, corporation, trust or other organized entity who enters into a contract for the purchase of a tuition unit or units on behalf of a beneficiary. Only one (1) individual, association, corporation, trust or other organized entity may be named as the contract purchaser.

Authority: *T.C.A. §§49-7-805(16) and 49-7-802(8).*

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(q) in its entirety and by substituting instead the following:

- (q) “Purchaser’s appointee” means the person who is named in the contract by the purchaser to exercise the rights of the purchaser under the contract if the purchaser dies or becomes legally incompetent. The purchaser’s appointee may be the beneficiary. The purchaser may change the designation at any time in writing to the Board. If the purchaser dies or becomes legally incompetent, the purchaser’s appointee shall automatically become the purchaser for purposes of these rules and the contract, including, but not limited to, Rule 1700-5-1-.01(2)(r).

Authority: *T.C.A. §§49-7-805(16) and 49-7-809(a)(10).*

1700-5-1-.01 In General is amended by deleting Subparagraph (2)(r) in its entirety and by substituting instead the following:

- (r) “Refund recipient” means the person designated in the contract by the purchaser as the person entitled to terminate the contract and to receive refunds arising out of the contract pursuant to Rule 1700-5-1-.10 below. The refund recipient may only be either the purchaser or the beneficiary. The purchaser may change the designation at any time in writing to the Board, provided that only the purchaser or the beneficiary is designated. In the event the purchaser is named the refund recipient and dies prior to receiving the refund, the beneficiary shall be entitled to any refund due under the contract.

Authority: *T.C.A. §§49-7-805(16), 49-7-802(14), 49-7-809(a)(3) and 49-7-811.*

1700-5-1-.03 Contract Acceptance is amended by adding to Subparagraph (1)(a) the punctuation and words “, if any,” immediately after the words “application fee” in the first sentence thereof so that, as amended, the Subparagraph shall read:

- (a) Fee. Receipt by the Board of the appropriate application fee, if any, from the purchaser on behalf of a named beneficiary. The beneficiary or the purchaser must be a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time the contract is purchased;

Authority: *T.C.A. §§49-7-805(16), 49-7-805(10) and 49-7-807(c).*

1700-5-1-.03 Contract Acceptance is amended by deleting Paragraph (3) in its entirety and by substituting instead the following:

- (3) Rejection. If a purchaser fails to provide all the information required in Paragraph (1) of this Rule within six (6) months of the Board’s receipt of the proposed contract, the Board may reject the proposed contract and refund to the purchaser all amounts paid thereunder, less any applicable fee imposed by the Board pursuant to Rule 1700-5-

1-.13. Rejection of a contract shall not preclude the purchaser from reapplying for a contract in the future provided the purchaser completes a new contract and pays any additional application fee which may be required by the Board pursuant to Rule 1700-5-1-.13.

Authority: T.C.A. §§49-7-805(16), 49-7-805(10) and 49-7-807(c).

1700-5-1-.05 Purchase of Tuition Units is amended by deleting Paragraph (4) in its entirety and by substituting instead the following:

- (4) **Limit on Number of Units.** Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an educational services plan tuition contract as described in these rules and an educational savings plan tuition contract as described in Chapter 1700-5-2 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same beneficiary. In addition, more than one individual may enter into an educational savings plan tuition contract, an educational services plan tuition contract, or both, on behalf of the same beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-5-1-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay tuition, required fees, and room and board for five (5) years of undergraduate enrollment at the highest cost institution of higher education.

Authority: T.C.A. §§49-7-805(16), 49-7-805(11), 49-7-805(12) and 49-7-806.

1700-5-1-.08 Transfer of Tuition Units is amended by deleting the same in its entirety and by substituting instead the following:

1700-5-1-.08 CHANGE OF BENEFICIARY AND TRANSFER OF TUITION UNITS.

- (1) **Change of Beneficiary.** Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right to change the beneficiary of the account at any time provided the new beneficiary is a “member of the family” of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k), and provided that either the purchaser or the new beneficiary is a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time of the change. If the Board has chosen to charge an application fee pursuant to Rule 1700-5-1-.13, then an application fee must be paid to change the beneficiary of the account.
- (2) **Transfer of Tuition Units.** Subject to the conditions set forth in Paragraph (3) below, the purchaser shall have the right at any time to transfer all or a portion of the tuition units in the beneficiary’s account to an account for a different beneficiary provided such beneficiary is a “member of the family” of the original beneficiary, as such term is defined in Rule 1700-5-1-.01(2)(k). If the transfer is for a portion of the tuition units in the original beneficiary’s account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing beneficiary and the new beneficiary will each have at least ten (10) tuition units in their respective accounts. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-5-1-.13, then a transfer fee must be paid to transfer the funds. In addition, if the new beneficiary does not have an existing account, then (i) either the purchaser or the new beneficiary must be a Tennessee resident as defined in Rule 1700-5-1-.01(2)(t) at the time of the transfer and (ii) if the Board has chosen to charge an application fee pursuant to Rule 1700-5-1-.13, then an application fee must also be paid to open the new account for the new beneficiary.
- (3) **Conditions.** Any change of beneficiary or transfer of tuition units under this Paragraph is subject to the following conditions:

- (a) Any request to change beneficiaries or to transfer tuition units must be made in writing, must state the name and Social Security number of the proposed new beneficiary and must be signed by the purchaser. If the request is for a transfer of tuition units to an existing account, the written request must state the account number to which the transfer is to be made;
 - (b) Payment of any applicable transfer fee charged by the Board pursuant to Rule 1700-5-1-.13;
 - (c) If applicable, payment of any application fee charged by the Board pursuant to Rule 1700-5-1-.13;
 - (d) The purchaser and the new beneficiary to whom the units are proposed to be transferred certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for the change of beneficiary or transfer of the tuition units. If the new beneficiary is a minor, the certification shall be made on behalf of the new beneficiary by the new beneficiary's appointee; and
 - (e) Transfers or changes in beneficiaries under this Paragraph shall not be permitted to the extent they would constitute excess contributions under Rule 1700-5-1-.05(4).
- (4) Eligibility for Use. Any tuition units in the account of a new beneficiary may be used immediately, provided all other conditions for use of the units have been met, including the two-year waiting period.

Authority: *T.C.A. §§49-7-805(16), 49-7-805(8), 49-7-805(13), 49-7-805(14), 49-7-809(a)(2) and 49-7-809(a)(8).*

1700-5-1-.09 Scholarship Recipients is amended by deleting Paragraph (1) in its entirety and by substituting instead the following:

- (1) If a beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the beneficiary, the Board will upon the request of the refund recipient and upon being furnished information about the scholarship, allowance or payment:
 - (a) Refund.
 - 1. Pay a refund to the refund recipient in an amount equal to the value of the tuition units that are not needed to cover tuition or other educational costs on account of the scholarship, allowance or payment and which would have otherwise been paid during the academic term to the institution of higher education at which the beneficiary is enrolled.
 - 2. If the scholarship, allowance or payment has a duration that extends beyond one (1) academic term, the refund recipient may request a refund in advance of the scholarship payment. The amount of the refund payable to the refund recipient will be equal to (i) the total purchase price of all the tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the refund is made, multiplied by the number of tuition units in the beneficiary's account that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment, (iii) minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13 below.

Notwithstanding this Part, the refund payable on account of any tuition units that are not needed to cover the future tuition or other educational costs on account of the scholarship, allowance or payment that were purchased less than two (2) full years prior to the refund request shall equal the total purchase

price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13.

- (b) Retain. Retain the tuition units in the beneficiary's account for later use;
- (c) Transfer. Transfer the tuition units to a new beneficiary pursuant to Rule 1700-5-1-.08; or
- (d) Rollover. Roll the tuition units over to another qualified tuition plan or program for the benefit of the beneficiary or to the credit of a different beneficiary who is a "member of the family" of the original beneficiary pursuant to Rule 1700-5-1-.18.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14), 49-7-809(a)(8) and 49-7-811(d).

1700-5-1-.10 Contract Termination and Refunds is amended by deleting Part (2)(a)1 in its entirety and by substituting instead the following:

- 1. One percent (1%) of the weighted average tuition in the academic year the contract is terminated, or if termination is due to death, in the academic year the death occurred, multiplied by the number of tuition units purchased and not used. Notwithstanding this Part, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units; or

Authority: T.C.A. §§49-7-805(16), 49-7-805(10), 49-7-805(14) and 49-7-811.

1700-5-1-.10 Contract Termination and Refunds is amended by deleting Subparagraph (2)(b) in its entirety and by substituting instead the following:

- (a) Voluntary Reasons. In the event a contract is terminated under any of the conditions described in Subparagraphs (1)(b) - (1)(e) above, the amount of the refund paid to the refund recipient shall be equal to: (i) the total purchase price of all tuition units purchased and not used, (ii) plus one hundred percent (100%) of the difference between said purchase price and one percent (1%) of the weighted average tuition in the academic year the contract is terminated, multiplied by the number of tuition units purchased and not used, (iii) minus any termination fee. Notwithstanding this Subparagraph, the refund payable on account of any tuition units that were purchased less than two (2) full years prior to the refund request shall equal the total purchase price paid for those units, minus any termination fee charged by the Board pursuant to Rule 1700-5-1-.13.

Authority: T.C.A. §§49-7-805(16), 49-7-805(10), 49-7-805(14) and 49-7-811.

1700-5-1-.11 Plan Termination is amended by deleting Paragraph (1) in its entirety and by substituting instead the following:

- (1) If the Board determines that the educational services plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the contracts. Subject to Rule 1700-5-1-.12 below, the amount of the refund to which the refund recipient is entitled shall be the refund provided for in Paragraph (2)(a) of Rule 1700-5-1-.10.

Authority: T.C.A. §§49-7-805(16), 49-7-823 and 49-7-824.

1700-5-1-.17 Payments to Beneficiary is amended by deleting Paragraph (1) in its entirety and by substituting instead the following:

- (1) Reimbursement of Costs Paid.
 - (a) Written Request. If the beneficiary has paid tuition or other educational costs required for the enrollment or attendance of the beneficiary at an institution of higher education, then the beneficiary may make a written request to the Board for reimbursement of the amount so paid. The request must contain a certification from the beneficiary that the amount requested was actually used to pay for his or her tuition or other educational costs. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.
 - (b) Amount and Timing of Payment. Any reimbursement made to a beneficiary under this Subparagraph will equal the amount requested, not to exceed the dollar value of the tuition units in the beneficiary's account that are eligible for use under Rule 1700-5-1-.06(1). The reimbursement will be paid to the beneficiary within sixty (60) days of receipt by the Board of the request required in Subparagraph (1)(a) of this Rule.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14) and 49-7-809(b).

1700-5-1-.17 Payments to Beneficiary is amended by deleting Paragraph (2) in its entirety and by substituting instead the following:

- (2) Advance Payments.
 - (a) Written Request. If the beneficiary has been accepted for enrollment in an institution of higher education and intends to use tuition units in the account for the payment of tuition or other educational costs required for the attendance of the beneficiary at the institution, then the beneficiary may make a written request to the Board for a distribution to be made directly to the beneficiary for the payment of such costs. The request must contain a certification from the beneficiary that the distribution will be expended solely for his or her tuition or other educational costs.
 - (b) Amount and Timing of Payment. Within sixty (60) days of receipt of the request, the Board will pay to the beneficiary an amount equal to the funds requested, not to exceed the dollar value of the tuition units in beneficiary's account that are eligible for use under Rule 1700-5-1-.06(1).

Authority: T.C.A. §§49-7-805(16), 49-7-805(14) and 49-7-809(b).

The proposed rules and amendments set out herein were properly filed in the Department of State on the 28th day of February, 2002, 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 June, 2002. (02-33)

TREASURY DEPARTMENT - 1700
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD

CHAPTER 1700-5-2
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST
EDUCATIONAL SAVINGS PLAN

Presented herein are proposed rules and amendments of the Board of Trustees of the Tennessee Baccalaureate Education System Trust 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 the Tennessee Baccalaureate Education System located in Suite 1340 of the 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

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1700-5-2-.18 Rollovers

1700-5-2-.18 ROLLOVERS.

- (1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the Purchaser may rollover all or a portion of the funds in the Beneficiary's Account to an account established for another Beneficiary under the Educational Services Plan as defined in Rule 1700-5-2-.01(2)(i) or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the Beneficiary to whose Account the funds are being transferred is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-5-2-.01(2)(k).
- (2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the Purchaser may also rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary under the Educational Services Plan as defined in Rule 1700-5-2-.01(2)(i) or under another qualified tuition program established under Section 529 of the Internal Revenue Code.
- (3) Conditions. Any rollover under this Paragraph is subject to the following conditions:
 - (a) The Purchaser makes a written rollover request to the Board on such forms as may be prescribed by the Board;
 - (b) Prior to honoring the rollover request, the Board may require the Purchaser to establish that the plan or program to which the funds are being transferred is a qualified plan or program as defined in Paragraphs (1) and (2) above; and

- (c) Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code.
- (4) Rollover Amount. Any rollover made under this Paragraph shall be equal to (i) the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus (ii) any transfer fee charged by the Board pursuant to Rule 1700-5-2-.14 above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14) and 49-7-809(a)(8).

AMENDMENTS

Table of Contents is amended by deleting the figures and words "1700-5-2-.09 Transfer of Account Funds" and by substituting instead the figures and words "1700-5-2-.09 Change of Beneficiary and Transfer of Account Funds".

Authority: T.C.A. §§49-7-805(16), 49-7-805(8), 49-7-805(13) and 49-7-809(a)(2).

1700-5-2-.01 In General is amended by deleting from Subparagraph (2)(c) the words "and any penalties assessed thereon" so that, as amended, the Subparagraph shall read:

- (c) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under the Contract, plus the earnings or losses incurred thereon, including any withdrawals made from the Account.

Authority: T.C.A. §§49-7-805(16), 49-7-808 and 49-7-812(b).

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(e) in its entirety and by substituting instead the following:

- (e) "Beneficiary's Appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Beneficiary under the Contract if the Beneficiary is a minor, dies or is legally incompetent. The Beneficiary's Appointee may be the same person as the Purchaser or the Purchaser's Appointee. The Purchaser may change the designation at any time in writing to the Board.

Authority: T.C.A. §§49-7-805(16) and 49-7-809(a)(10).

1700-5-2-.01 In General is amended by adding to Subparagraph (2)(h) the punctuation and words ", associations, corporations, trusts and other organized entities" immediately after the word "individuals" in the first sentence thereof so that, as amended, the Subparagraph shall read:

- (h) "Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a Purchaser for a designated Beneficiary that entitles the Beneficiary to apply such contributions and earnings thereon to the payment of that Beneficiary's Tuition and Other Educational Costs.

Authority: T.C.A. §§49-7-805(16), 49-7-802(3) and 49-7-808.

1700-5-2-.01 In General is amended by adding to Subparagraph (2)(i) the punctuation and words “, associations, corporations, trusts and other organized entities” immediately after the word “individuals” in the first sentence thereof so that, as amended, the Subparagraph shall read:

- (i) “Educational Services Plan” means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary’s tuition and other qualified postsecondary education expenses as set forth in Chapter 1700-5-1 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-5-1 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§49-7-805(16), 49-7-802(4) and 49-7-807.

1700-5-2-.01 In General is amended by adding immediately after the words and punctuation “legally adopted sister,” in Subparagraph (2)(k) thereof the words and punctuation “first cousin,” so that, as amended, the Subparagraph shall read:

- (k) “Member of the Family” means the brother, sister, half brother, half sister, legally adopted brother, legally adopted sister, first cousin, niece or nephew of the original Beneficiary, or such other person as may be defined as a “member of the family” under the sections of the Internal Revenue Code which are applicable to the Program.

Authority: T.C.A. §§49-7-805(16), 49-7-805(13) and 49-7-809(a)(2).

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(l) in its entirety and by substituting instead the following:

- (l) “Other Educational Costs” means fees and the costs of books, supplies and equipment required for the enrollment or attendance of the Beneficiary at the Institution of Higher Education where the Beneficiary is enrolled. “Other Educational Costs” also means the costs of Room and Board, as defined in Rule 1700-5-2-.01(2)(t) below, incurred while the Beneficiary is enrolled in an Institution of Higher Education on at least a half-time basis and expenses for special needs services in the case of a special needs Beneficiary which are incurred in connection with the enrollment or attendance of the special needs Beneficiary at the Institution of Higher Education where the Beneficiary is enrolled.

Authority: T.C.A. §§49-7-805(16), 49-7-802(6), 49-7-803, 49-7-805(14) and 49-7-808.

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(n) in its entirety and by substituting instead the following:

- (n) “Permanent disability” means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless the individual furnishes proof of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.

Authority: T.C.A. §§49-7-805(16), 49-7-809 and 49-7-811.

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(p) in its entirety and by substituting instead the following:

- (p) “Purchaser” means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to a savings account on behalf of a Beneficiary. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.

Authority: T.C.A. §§49-7-805(16) and 49-7-802(8).

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(q) in its entirety and by substituting instead the following:

- (q) “Purchaser’s Appointee” means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes legally incompetent. The Purchaser’s Appointee may be the Beneficiary. The Purchaser may change the designation at any time in writing to the Board. If the Purchaser dies or becomes legally incompetent, the Purchaser’s Appointee shall automatically become the Purchaser for purposes of these Rules and the Contract, including, but not limited to, Rule 1700-5-2-.01(2)(s).

Authority: T.C.A. §§49-7-805(16) and 49-7-809(a)(10).

1700-5-2-.01 In General is amended by deleting Subparagraph (2)(s) in its entirety and by substituting instead the following:

- (s) “Refund Recipient” means the person designated in the Contract by the Purchaser as the person entitled to terminate the Contract and to receive refunds arising out of the Contract pursuant to Rule 1700-5-2-.11 below. The Refund Recipient may only be either the Purchaser or the Beneficiary. The Purchaser may change the designation at any time in writing to the Board, provided that only the Purchaser or the Beneficiary is designated. In the event the Purchaser is named the Refund Recipient and dies prior to receiving the refund, the Beneficiary shall be entitled to any refund due under the Contract.

Authority: T.C.A. §§49-7-805(16), 49-7-802(14), 49-7-809(a)(3) and 49-7-811.

1700-5-2-.04 Beneficiary Accounts is amended by deleting from Paragraph (1) the words “and any penalties assessed thereon” so that, as amended, the Paragraph shall read:

- (1) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any withdrawals made from the Account.

Authority: T.C.A. §§49-7-805(16) and 49-7-812(b).

1700-5-2-.05 Contributions is amended by deleting Paragraph (2) in its entirety and by substituting instead the following:

- (2) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an Educational Savings Plan tuition contract as described in these rules and an Educational Services Plan tuition contract as described in Chapter 1700-5-1 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may enter into an Educational Savings Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by

majority vote of the Board pursuant to Rule 1700-5-2-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Tuition, required fees, and Room and Board for five (5) years of undergraduate enrollment at the highest cost Institution of Higher Education.

Authority: T.C.A. §§49-7-805(16), 49-7-805(11), 49-7-805(12) and 49-7-806.

1700-5-2-.08 Payments to Beneficiary is amended by deleting the same in its entirety and by substituting instead the following:

1700-5-2-.08 PAYMENTS TO BENEFICIARY.

(1) Reimbursement of Costs Paid.

- (a) **Written Request.** If the Beneficiary has paid Tuition or Other Educational Costs required for the enrollment or attendance of the Beneficiary at an Institution of Higher Education, then the Beneficiary may make a written request to the Board for reimbursement of the amount so paid. The request must contain a certification from the Beneficiary that the amount requested was actually used to pay for his or her Tuition or Other Educational Costs. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.
- (b) **Amount and Timing of Payment.** Any reimbursement made to a Beneficiary under this Subparagraph will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account. The reimbursement will be paid to the Beneficiary within sixty (60) days of receipt by the Board of the request required in Subparagraph (1)(a) of this Rule.

(2) Advance Payments.

- (a) **Written Request.** If the Beneficiary has been accepted for enrollment in an Institution of Higher Education and intends to use funds in the Account for the payment of Tuition or Other Educational Costs required for the attendance of the Beneficiary at the Institution, then the Beneficiary may make a written request to the Board for a distribution to be made directly to the Beneficiary for the payment of such costs. The request must contain a certification from the Beneficiary that the distribution will be expended solely for his or her Tuition or Other Educational Costs.
- (b) **Amount and Timing of Payment.** Within sixty (60) days of receipt of the request required in Subparagraph (2)(a) of this Rule, the Board will pay to the Beneficiary an amount equal to the funds requested, not to exceed the Redemption Value of the Beneficiary's Account.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14) and 49-7-809(b).

1700-5-2-.09 Transfer of Account Funds is amended by deleting the same in its entirety and by substituting instead the following:

1700-5-2-.09 CHANGE OF BENEFICIARY AND TRANSFER OF ACCOUNT FUNDS.

- (1) **Change of Beneficiary.** Subject to the conditions set forth in Paragraph (3) below, the Purchaser shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a “Member of the Family” of the original Beneficiary, as such term is defined in Rule 1700-5-2-.01(2)(k). If the Board has chosen to charge an application fee pursuant to Rule 1700-5-2-.14, then an application fee must be paid to change the Beneficiary of the Account.
- (2) **Transfer of Account Funds.** Subject to the conditions set forth in Paragraph (3) below, the Purchaser shall have the right at any time to transfer all or a portion of the funds in the Beneficiary’s Account to an Account for a different Beneficiary provided such Beneficiary is a “Member of the Family” of the original Beneficiary, as such term is defined in Rule 1700-5-2-.01(2)(k). If the transfer is for a portion of funds in the original Beneficiary’s Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty-five dollars (\$25.00) in their respective accounts. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-5-2-.14, then a transfer fee must be paid to transfer the funds. In addition, if the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-5-2-.14, then an application fee must also be paid to open the new Account for the New Beneficiary.
- (3) **Conditions.** Any change of Beneficiary or transfer of funds under this Paragraph is subject to the following conditions:
 1. Any request to change Beneficiaries or to transfer funds must be made in writing, must state the name and Social Security number of the proposed New Beneficiary and must be signed by the Purchaser. If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;
 2. Payment of any applicable transfer fee charged by the Board pursuant to Rule 1700-5-2-.14;
 3. If applicable, payment of any application fee charged by the Board pursuant to Rule 1700-5-2-.14;
 4. The Purchaser and the New Beneficiary to whom the funds are proposed to be transferred certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for the change of beneficiary or transfer of the funds. If the New Beneficiary is a minor, the certification shall be made on behalf of the New Beneficiary by the New Beneficiary’s Appointee; and
 5. Transfers or changes in Beneficiaries under this Paragraph shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-5-2-.05(2).
- (4) **Eligibility for Use.** Any funds in the Account of a New Beneficiary may be used immediately, provided the funds are used solely for the Tuition or Other Educational Costs of the New Beneficiary.

Authority: *T.C.A. §§49-7-805(16), 49-7-805(8), 49-7-805(10), 49-7-805(13), 49-7-805(14) and 49-7-809(a)(2).*

1700-5-2-.10 Scholarship Recipients is amended by deleting Paragraph (1) in its entirety and by substituting instead the following:

- (1) If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Board will upon the request of the Refund Recipient and upon being furnished information about the scholarship, allowance or payment:

(a) Refund.

1. Pay a refund to the Refund Recipient in an amount equal to the Redemption Value of the Account that is not needed to cover Tuition or Other Educational Costs on account of the scholarship, allowance or payment and which would have otherwise been paid during that Academic Term.
2. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Refund Recipient may request a refund in advance of the scholarship payment. The amount of the refund payable to the Refund Recipient will be equal to (i) the Redemption Value of the Beneficiary's Account that is not needed to cover the future Tuition or Other Educational Costs on account of the scholarship, allowance or payment, (ii) minus any applicable termination fee charged by the Board pursuant to Rule 1700-5-2-.14 below. The Redemption Value of the Account shall be determined as of the date the refund is made.

(a) Retain. Retain the funds in the Beneficiary's Account for later use;

(b) Transfer. Transfer the funds to a New Beneficiary pursuant to Rule 1700-5-2-.09; or

(d) Rollover. Roll the funds over to another qualified tuition plan or program for the benefit of the Beneficiary or to the credit of a different Beneficiary who is a "Member of the Family" of the original Beneficiary pursuant to Rule 1700-5-2-.18.

Authority: T.C.A. §§49-7-805(16), 49-7-805(14), 49-7-809(a)(8) and 49-7-811(d).

1700-5-2-.11 Contract Termination and Refunds is amended by deleting Subparagraph (2)(b) in its entirety and by substituting instead the following:

- (b) Voluntary Reasons. In the event a Contract is terminated under any of the conditions described in Subparagraphs (1)(b) – (1)(e) above, the amount of the refund paid to the Refund Recipient shall be equal to: (i) the Redemption Value of the Account at the time the refund is made, minus (ii) any applicable termination fee charged by the Board pursuant to Rule 1700-5-2-.14 below.

Authority: T.C.A. §§49-7-805(16), 49-7-805(10), 49-7-805(14) and 49-7-811.

1700-5-2-.12 Plan Termination is amended by deleting Paragraph (1) in its entirety and by substituting instead the following:

- (1) If the Board determines that the Educational Savings Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Rule 1700-5-2-.13 below, the amount of the refund to which the Refund Recipient is entitled shall be the refund provided for in Paragraph (2)(a) of Rule 1700-5-2-.11.

Authority: T.C.A. §§49-7-805(16), 49-7-823 and 49-7-824.

The proposed rules and amendments set out herein were properly filed in the Department of State on the 28th day of February, 2002, 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 June, 2002. (02-32)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0780 - Department of Commerce and Insurance, Division of TennCare and Division of Insurance, public necessity rules dealing with uniform TennCare claims process, standardized instructions for completing the form and standardized responses to questions and other information required on the form, for providers and managed care organizations participating in the TennCare program to use in the submission of claims by providers seeking payment, Chapter 0780-1-73 Uniform Claims Process for TennCare Participating Managed Care Organizations, 1 T.A.R. (January 2002) - Filed January 31, 2002; effective through June 14, 2002. (12-27)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules relating to child support payments, chapter 1240-2-3 Miscellaneous IV-D, 12 T.A.R. (December 2001) - Filed November 1, 2001 effective through April 15, 2002. (12-22)
- 1680 - Department of Transportation - Public Transportation, Waterways, and Rail Division - Public Necessity Rules relating to review and approval of Construction of public and/or private highway-railroad grade crossings, 2 T.A.R. (February 15, 2002) - Filed January 16, 2002. Effective March 1, 2002 through August 13, 2002. (01-32) The Department of Transportation rules in the Public Necessity section of the February 15, 2002 Tennessee Administrative Register are Public Necessity rules effective March 1, 2002 for 165 days through August 13, 2002. The Secretary of State regrets the error. The Chapter of the rules is 1680-12-1, Railroad Grade Crossing Standards.

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RULEMAKING HEARINGS

BOARD OF CHIROPRACTIC EXAMINERS- 0260

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, 63-4-119, and 63-4-123. 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 30th day of April, 2002.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0260-2-.06, Fees, is amended by adding the following language as new subparagraphs (1) (g) and (4) (h):

- (1) (g) Continuing Education Course Review Fee – A non-refundable fee to be paid per clock/lecture hour by all continuing education course providers each time an application for course approval(s) is filed.
- (4) (h) Continuing Education Course Review Fee (per clock/lecture hour) \$ 2.00

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

Rule 0260-2-.12, Continuing Education, is amended by deleting paragraph (1) but not its subparagraphs and by deleting subparagraph (1) (b) but not its parts, in their entirety and substituting instead the following language so that as amended, the new paragraph (1) but not its subparagraphs and the new subparagraph (1) (b) but not its parts shall read:

- (1) Licensees are required to complete twelve (12) clockhours of board approved continuing education each calendar year (January 1 - December 31).
- (1) (b) Prior approval is required for all course providers not mentioned in subparagraph (1) (a) of this rule, and may be obtained by submitting the course review fee as provided in Rule 0260-2-.06 and the following information to the Board's administrative office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course:

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-17)

THE TENNESSEE BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 25th day of April, 2002.

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

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

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

SUBSTANCE OF PROPOSED RULES

Amendments

Rule 0460-1-.01, Definitions, is amended by deleting paragraphs (10), (11), and (13) in their entirety and renumbering the remaining paragraphs accordingly.

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

Rule 0460-2-.07, Anesthesia and Sedation, is amended by deleting paragraphs (1), (2), (3), and (4) in their entirety and substituting the following language as new paragraphs (1), (2), (3), and (4), and is further amended by adding the following language as new paragraphs (5), (6), (7), (8), (9), (10), (11), (12), and (13), so that as amended, the new paragraphs (1) through (13) shall read:

(1) Definitions

- (a) Nitrous oxide inhalation analgesia. The administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
- (b) Antianxiety premedication (anxiolysis). The prescription of pharmacologic substances for the relief of anxiety and apprehension which does not result in a depressed level of consciousness.
- (c) Conscious sedation. A depressed level of consciousness produced by the administration of pharmacologic substances, that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
- (d) Deep sedation/general anesthesia. A controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command.
- (e) Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa [i.e., oral, rectal, sublingual].
- (f) Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC)].
- (g) Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

(2) Permits required.

- (a) No permit is required for the administration of nitrous oxide inhalation analgesia; however, dentists must comply with the provision of 0460-2-.07 (4).
- (b) No permit is required for the use of antianxiety premedication (anxiolysis); however, dentists must comply with the provision of 0460-2-.07 (5).
- (c) Dentists must obtain a permit to administer conscious sedation. A conscious sedation permit may be limited or comprehensive.
 - 1. A limited conscious sedation permit authorizes dentists to administer conscious sedation by the enteral and/or combination inhalation-enteral method.
 - 2. A comprehensive conscious sedation permit authorizes a dentist to administer conscious sedation by the enteral, combination inhalation-enteral or parenteral method.
 - 3. Dentists who administer conscious sedation by any method to children thirteen (13) and under must have a comprehensive conscious sedation permit.

4. Dentists issued limited or comprehensive conscious sedation permits must comply with rule 0460-2-.07 (6).
 - (d) Dentists must obtain a permit to administer deep sedation/general anesthesia and comply with rule 0460-2-.07 (7).
 - (e) A dentist who holds a limited or comprehensive conscious sedation permit or a deep sedation/general anesthesia permit for a primary office location and who practices at one (1) or more additional office locations must obtain a facilities permit for every additional office location. A dentist who contracts with an anesthesiologist (MD or DO) or another permitted dentist to administer conscious sedation or deep sedation/general anesthesia must obtain a facilities permit.
- (3) Board to determine degree of sedation: In a proceeding of the board at which the board must determine the degree of sedation or level of consciousness of a patient, the board will base its findings on:
 - (a) The type and dosage of medication that was administered or is proposed for administration to the patient;
 - (b) The age, physical size and medical condition of the patient receiving the medication; and
 - (c) The degree of sedation or level of consciousness that should reasonably be expected to result from that type and dosage of medication.
 - (4) Nitrous oxide inhalation analgesia.
 - (a) Nitrous oxide may be administered by a licensed dentist or a licensed and properly certified dental hygienist under the direct supervision of a licensed and registered dentist. The administering or supervising dentist must be on the premises at all times that nitrous oxide is in use. An authorized person must constantly monitor each patient receiving nitrous oxide.
 - (b) In addition to dentists, any licensed dental hygienist or registered dental assistant who has complied with rules 0460-3-.06 or 0460-4-.05 may monitor patients who are receiving nitrous oxide.
 - (c) Monitoring nitrous oxide. Monitoring patients receiving nitrous oxide inhalation analgesia as an adjunct to dental or to dental hygiene procedures consists of continuous direct clinical observation of the patient and begins after the dentist or dental hygienist has initiated the analgesia. The dentist must be notified of any change in the patient which might indicate an adverse effect on the patient. Those registered in nitrous oxide monitoring may terminate the administration of nitrous oxide inhalation analgesia.
 - (d) All equipment for the administration of nitrous oxide must be designed specifically to guarantee that an oxygen concentration of no less than twenty-five (25) percent can be administered to the patient.
 - (e) All equipment for the administration of nitrous oxide must be equipped with a scavenger system.
 - (5) Antianxiety premedication (anxiolysis).
 - (a) The regulation and monitoring of this modality of treatment are the responsibility of the ordering dentist. The drugs used should carry a margin of safety wide enough to render unintended conscious sedation or loss of consciousness unlikely.

- (b) A dentist using antianxiety premedication must employ auxiliary personnel who are certified in basic life support.
 - (c) If a dentist achieves a state of conscious sedation as defined [0460-2-.07 (1) (c)] from the administration of antianxiety premedication, the rules for conscious sedation shall apply.
- (6) Conscious sedation.
- (a) Dentists must obtain a permit from the Board of Dentistry to administer conscious sedation in the dental office. Conscious sedation permits are either limited or comprehensive.
 - 1. To obtain a limited conscious sedation permit, a dentist must provide certification of one (1) of the following:
 - (i) Completion of an ADA accredited postdoctoral training program which affords comprehensive training necessary to administer and manage enteral and/or combination inhalation-enteral conscious sedation, or
 - (ii) Completion of a continuing education course which consists of a minimum of eighteen (18) hours of didactic instruction plus twenty (20) clinically-oriented experiences which provide competency in enteral and/or combination inhalation-enteral conscious sedation. The course content must be consistent with that described for an approved continuing education program in these techniques in the ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry, 2000 edition, or its successor publication.
 - 2. To obtain a comprehensive conscious sedation permit a dentist must provide certification in one (1) of the following:
 - (i) Completion of an ADA accredited postdoctoral training program which affords comprehensive training to administer and manage parenteral conscious sedation, or
 - (ii) Completion of a continuing education course consisting of a minimum of sixty (60) hours of didactic instruction plus the management of at least twenty (20) patients which provides competency in parenteral conscious sedation. The course content must be consistent with that described for an approved continuing education program in these techniques in the ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry, 2000 edition, or its successor publication, or
 - (iii) Possess on the effective date of this regulation a current valid intravenous conscious sedation permit issued by the board. Such dentist will be issued a new comprehensive conscious sedation permit and must comply with the general rules set forth in this regulation.
 - 3. A dentist who employs a Certified Registered Nurse Anesthetist (CRNA) to administer conscious sedation must have a valid comprehensive conscious sedation permit.
 - 4. A dentist may utilize a physician (MD or DO), who is a member of the anesthesiology staff of an accredited hospital, or a permitted dentist to administer conscious sedation in that dentist's office. Such person must remain on the premises of the dental facility until all patients given conscious sedation meet discharge criteria. A facility permit 0460-2-.07 (2) (e) must be obtained and the office must comply with the general rules for conscious sedation 0460-2-.07 (6) (b). A dentist utilizing such person and complying with these provisions does not require a conscious sedation permit.

(b) General rules for conscious sedation.

1. Physical facilities.

- (i) The treatment room must be large enough to accommodate the patient adequately on a table or in a dental chair and to allow an operating team, consisting of at least two persons, to move freely about the patient.
- (ii) The operating table or dental chair must allow the patient to be placed in a position such that the operating team can maintain the airway, allow the operating team to alter the patient's position quickly in an emergency, and provide a firm platform for the management of cardiopulmonary resuscitation.
- (iii) The lighting system must be adequate to allow an evaluation of the patient's skin and mucosal color and provide adequate light for the procedure.
- (iv) Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities.
- (v) A system for delivering oxygen must have adequate full-face masks and appropriate connectors, and be capable of delivering oxygen to the patient under positive pressure.
- (vi) A recovery area must be provided that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area may be the treatment room. A member of the staff must be able to observe the patient at all times during the recovery.
- (vii) An alternate lighting system sufficiently intense to allow completion of any procedure and an alternate suction device that will function effectively must be available for emergency use at the time of a general power failure.

2. Personnel.

- (i) During conscious sedation at least one (1) person, in addition to the operating dentist, must be present.
- (ii) Members of the operating team must be trained for their duties according to protocol established by the dentist and must be currently certified in basic CPR.

3. Dental records. The dental record must include:

- (i) A medical history including current medications and drug allergies;
- (ii) Informed consent for the type of anesthesia used;
- (iii) Baseline vital signs including blood pressure and pulse. If determination of baseline vital signs is prevented by the patient's age, physical resistance or emotional condition, the reason(s) should be documented;
- (iv) A time-oriented anesthesia record which includes the drugs and dosage administered;
- (v) Documentation of complications or morbidity;

- (vi) Status of the patient on discharge.
4. Monitoring.
- (i) Direct clinical observation of the patient must be continuous.
 - (ii) Interval recording of blood pressure and pulse must occur.
 - (iii) Oxygen saturation must be evaluated continuously by pulse oximetry.
 - (iv) The patient must be monitored during recovery by trained personnel until stable for discharge.
 - (v) If monitoring procedures are prevented by the patient's age, physical resistance or emotional condition, the reason(s) should be documented.
5. Emergency management. The anesthesia permit holder is responsible for the management of emergencies associated with the administration of conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.
6. Recovery and discharge.
- (i) Patients must be monitored for adequacy of ventilation and circulation. The dental record must reflect that ventilation and circulation are stable prior to discharge.
 - (ii) The dental record must reflect that appropriate discharge instructions were given, and that the patient was discharged into the care of a responsible person.
- (7) Deep sedation/general anesthesia.
- (a) Dentists must obtain a permit from the Board of Dentistry to administer deep sedation/general anesthesia in the dental office.
 - 1. To obtain a deep sedation/general anesthesia permit, a dentist must provide certification of one (1) of the following:
 - (i) Successful completion of a minimum of one (1) year advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, 2000 edition, or its successor publication, or
 - (ii) Proof of successful completion of a graduate program in oral and maxillofacial surgery which has been approved by the Commission on Accreditation of the American Dental Association; or
 - (iii) Proof of successful completion of a residency program in general anesthesia of not less than one (1) calendar year that is approved by the Board of Directors of the American Dental Society of Anesthesiology for eligibility for the Fellowship in General Anesthesia or is a Diplomate of the American Board of Dental Anesthesiology; or
 - (iv) Possess on the effective date of this regulation a current, valid general anesthesia permit issued by the board. Such dentists will be issued a new certificate and must comply with the general rules set forth in this regulation.

2. At the time of application for a deep sedation/general anesthesia permit, a dentist must have current certification in Advanced Cardiac Life Support (ACLS). A pediatric dentist may substitute Pediatric Advanced Life Support (PALS).
 3. A dentist may utilize a physician (MD or DO), who is a member of an anesthesiology staff of an accredited hospital, or another permitted dentist to administer deep sedation or general anesthesia in that dentist's office. Such person must remain on the premises of the dental facility until all patients given deep sedation or general anesthesia meet discharge criteria. A facility permit [0460-2.07 (2) (e)] must be obtained and the office must comply with the general rules for deep sedation/general anesthesia. A dentist utilizing such person and complying with these provisions does not require a deep sedation/general anesthesia permit.
 4. A dentist who employs a Certified Registered Nurse Anesthetist (CRNA) to administer deep sedation/general anesthesia must have a valid deep sedation/general anesthesia permit.
 5. A dentist who holds a deep sedation/general anesthesia permit may administer conscious sedation.
- (b) General rules for deep sedation/general anesthesia.
1. Physical facilities.
 - (i) The treatment room must be large enough to accommodate the patient adequately on a table or in a dental chair and to allow an operating team, consisting of at least three (3) persons, to move freely about the patient.
 - (ii) The operating table or dental chair must allow the patient to be placed in a position such that the operating team can maintain the airway, allow the operating team to alter the patient's position quickly in an emergency, and provide a firm platform for the management of cardiopulmonary resuscitation.
 - (iii) The lighting system must be adequate to allow an evaluation of the patient's skin and mucosal color and provide adequate light for the procedure.
 - (iv) Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities.
 - (v) A system for delivering oxygen must have adequate full-face masks and appropriate connectors, and be capable of delivering oxygen to the patient under positive pressure.
 - (vi) A recovery area must be provided that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area may be the treatment room. A member of the staff must be able to observe the patient at all times during the recovery.
 - (vii) An alternate lighting system sufficiently intense to allow completion of any procedure and an alternate suction device that will function effectively must be available for emergency use at the time of a general power failure.
 2. Personnel.
 - (i) During deep sedation/general anesthesia at least two (2) persons, in addition to the operating dentist, must be present.

- (ii) Members of the operating team must be trained for their duties according to protocol established by the dentist and must be currently certified in basic CPR.
 - (iii) When the operating dentist is also administering the anesthetic drugs, one (1) member of the operating team, in addition to the dentist, must be specifically directed to monitor the patient.
3. Dental records. The dental record must include:
- (i) A medical history including current medications and drug allergies;
 - (ii) Informed consent for the type of anesthesia used;
 - (iii) Baseline vital signs including blood pressure, pulse and temperature. If determination of baseline vital signs is prevented by the patient's age, physical resistance or emotional condition the reason(s) should be documented;
 - (iv) A time-oriented anesthesia record which includes the drugs and dosage administered and an interval recording of blood pressure and pulse;
 - (v) Documentation of complications or morbidity;
 - (vi) Status of the patient on discharge.
4. Monitoring.
- (i) Direct clinical observation of the patient must be continuous;
 - (ii) Interval recording of blood pressure and pulse must occur;
 - (iii) Oxygen saturation must be monitored continuously by pulse oximeter;
 - (iv) Continuous EKG monitoring with electrocardioscope must occur;
 - (v) Respirations must be monitored for intubated patients by auscultation of breath sounds or end tidal CO₂;
 - (vi) If anesthetic agents implicated in the etiology of malignant hyperthermia are used, body temperature must continuously be monitored;
 - (vii) The patient must be monitored during recovery by trained personnel until stable for discharge.
5. Emergency management.
- (i) Written protocols must be established by the dentist to manage emergencies related to deep sedation/general anesthesia including but not limited to laryngospasm, bronchospasm, emesis and aspiration, airway occlusion by foreign body, angina pectoris, myocardial infarction, hypertension, hypotension, allergic and toxic reactions, convulsions, hyperventilation and hypoventilation.
 - (ii) If anesthetic agents implicated in the etiology of malignant hyperthermia are used, protocols to treat this entity must be established.

- (iii) Training to familiarize the operating team with these protocols must be periodic and current.
 - (iv) A cardiac defibrillator must be available.
 - (v) Equipment and drugs currently indicated for the treatment of the above listed emergency conditions must be present and readily available for use. Emergency protocols must include training in the use of this equipment and these drugs.
6. Recovery and discharge.
- (i) Patients must be monitored for adequacy of ventilation and circulation. The dental record must reflect that ventilation and circulation are stable prior to discharge.
 - (ii) The dental record must reflect that appropriate discharge instructions were given, and that the patient was discharged into the care of a responsible adult.
- (8) Continuing education.
- (a) In order to maintain a limited or comprehensive conscious sedation or deep sedation/general anesthesia permit, a dentist must:
 - 1. Maintain current certification in ACLS (a pediatric dentist may substitute PALS); or
 - 2. Certify attendance every four (4) years at a board approved course devoted specifically to the prevention and management of emergencies associated with conscious sedation or deep sedation/general anesthesia.
- (9) Reporting injury or mortality.
- (a) A written report shall be submitted to the board by the dentist within thirty (30) days of any anesthesia-related incident resulting in patient injury or mortality, which occurred when the patient was under the care of the dentist and required hospitalization. In the event of patient mortality, concurrent with a sedation or anesthesia-related incident, this incident must be reported to the board within two (2) working days, to be followed by the written report within thirty (30) days.
 - (b) A written report shall include:
 - 1. Description of dental procedure;
 - 2. Description of preoperative physical condition of the patient;
 - 3. List of the drugs and dosages administered;
 - 4. Detailed description of techniques utilized in administering the drugs;
 - 5. Description of adverse occurrence to include:
 - (i) Detailed description of symptoms of any complications including, but not limited to, onset and type of symptoms in the patient;
 - (ii) Treatment instituted on patient;

- (iii) Response of the patient to treatment;
 - 6. Description of the patient's condition on termination of any procedure undertaken.
- (10) Permit process (limited conscious sedation, comprehensive conscious sedation, deep sedation/general anesthesia).
 - (a) To obtain a limited or comprehensive conscious sedation permit or deep sedation/general anesthesia permit, a dentist must apply on an application form provided by the board and submit the appropriate fee as established by the board.
 - (b) The applicant must certify:
 - 1. For a limited conscious sedation permit:
 - (i) That the educational requirements of 0460-2-.07 (6) (a) 1. are met; and
 - (ii) Compliance with general rules 0460-2-.07 (6) (b).
 - 2. For a comprehensive conscious sedation permit:
 - (i) That the educational requirements of 0460-2-.07 (6) (a) 2. are met; and
 - (ii) Compliance with general rules 0460-2-.07 (6) (b).
 - 3. For a deep sedation/general anesthesia permit:
 - (i) That the educational requirements of 0460-2-.07 (7) (a) have been met; and
 - (ii) Compliance with general rules 0460-2-.07 (7) (b).
 - (c) The application will be reviewed by the Anesthesia Credentials Committee and, if approved, a ninety (90) day provisional permit will be issued. Within the ninety (90) days an onsite evaluation will be accomplished by an evaluation team designated by the board. At the discretion of the board, this provisional permit may be extended for an additional ninety (90) day period.
 - (d) Upon successful completion of the onsite evaluation, a permit will be issued for limited conscious sedation, comprehensive conscious sedation or deep sedation/general anesthesia.
 - (e) An applicant who has deficiencies on the onsite evaluation will be notified in writing of these deficiencies and may be given an additional ninety (90) day provisional permit, during which time the deficiencies shall be corrected and a repeat onsite evaluation scheduled with a second evaluation team.
 - (f) Failure to correct the deficiencies will result in revocation of the provisional permit and denial of a permit. An applicant who is denied a permit must certify evidence of a minimum of twelve (12) hours of additional continuing education in anesthesia-related subjects in order to be eligible to reapply for a permit. An applicant reapplying for a permit will not be granted a provisional permit.
 - (g) Right of appeal. An applicant who is denied a permit may appeal this decision to the Board of Dentistry. The applicant will not be permitted to use conscious sedation or deep sedation/general anesthesia during the appeal process.

- (h) On the effective date of this rule a dentist, who is a graduate of an ADA accredited postdoctoral training program which affords comprehensive training in conscious sedation and who has used conscious sedation techniques in practice in Tennessee for three (3) years or more without an injury or mortality, will, upon application to the board, be granted a limited or comprehensive conscious sedation permit, waiving the onsite evaluation process. Said dentist must provide certification of training and of compliance with the general rules for conscious sedation as required by 0460-2-.07 (6) (b). To be eligible for this waiver the application must be submitted to the board within one (1) year of the effective date of this regulation.
 - (i) A permit must be renewed every two (2) years by payment of the appropriate renewal fee as established by the board and by certification of the continuing education requirement [0460-2-.07 (8) (a)] and by certification of compliance with the general rules for conscious sedation [0460-2-.07 (6) (b)] or deep sedation/general anesthesia [0460-2-.07 (7) (b)].
- (11) Permit process: Facilities permit.
- (a) A dentist who has a limited or comprehensive conscious sedation or deep sedation/general anesthesia permit will be deemed to have a facilities permit for that dentist's primary office location. All secondary office locations will be required to have facilities permits.
 - (b) A dentist who utilizes a physician anesthesiologist (MD or DO) or a permitted dentist to administer conscious sedation or deep sedation/general anesthesia must have a facilities permit for that office location.
 - (c) Facilities permits are not applicable to those hospital, outpatient surgery centers and/or dental school settings which have been approved by the Joint Commission on Accreditation of Health Care Organizations or the Commission on Accreditation of the Council on Education of the American Dental Association. Private dental offices of dentists practicing within hospital or dental school facilities do require permits.
 - (d) The applicant must certify that the office location complies with the general rules for conscious sedation [(6) (b)] or deep sedation/general anesthesia [(7) (b)]. Upon approval of the application by the Anesthesia Credentials Committee, an onsite evaluation will be scheduled by an evaluation team designated by the board.
 - (e) Upon application to the board a dentist, who holds a valid limited or comprehensive conscious sedation or deep sedation/general anesthesia permit will be granted a provisional facilities permit for any secondary office location. This provisional facilities permit will allow that dentist to administer conscious sedation or deep sedation/general anesthesia in that secondary office location for a period of ninety (90) days during which time an onsite evaluation will be scheduled. At the discretion of the board, this provisional facilities permit may be extended for an additional ninety- (90) day period. A provisional facilities permit is not available for a dentist who does not hold a limited or comprehensive conscious sedation or deep sedation/general anesthesia permit.
 - (f) Upon successful completion of the onsite evaluation, a facilities permit will be issued for conscious sedation or deep sedation/general anesthesia.
 - (g) An applicant who has deficiencies on the onsite evaluation will be notified in writing of these deficiencies. After certification that the deficiencies have been corrected a repeat onsite evaluation will be scheduled with a second evaluation team.

- (h) Failure to correct the deficiencies will result in denial of a facilities permit.
 - (i) Right of appeal. An applicant who is denied a facilities permit may appeal this decision to the Board of Dentistry. The applicant will not be permitted to use conscious sedation or deep sedation/general anesthesia at that facility during the appeal process.
 - (j) An applicant who has been denied a facilities permit may reapply to the board, provided the applicant provides proof to the board that the deficiencies resulting in the original denial have been corrected. Such reapplication will trigger the onsite evaluation process described in subparagraphs (d), (e), (f), and (g) above except that on reapplication a provisional permit is not available. In the event the second application is denied, the board will not consider additional applications.
 - (k) A facilities permit must be renewed every two (2) years by payment of the appropriate renewal fee as established by the board and by certification of compliance with the general rules for conscious sedation [0460-2-.07 (6) (b)] or deep sedation [0460-2-.07 (7) (b)].
- (12) Anesthesia Credentials Committee.
- (a) An Anesthesia Credentials Committee shall be appointed by the board to assist the board in the administration of this rule. All members of the committee shall be licensed to practice dentistry in Tennessee.
 - 1. The committee chairperson shall be a member of the board and may or may not hold an anesthesia permit.
 - 2. Other members of the committee shall all hold current, valid comprehensive conscious sedation or deep sedation/general anesthesia permits.
 - 3. In addition to the chairman the committee shall consist of:
 - (i) A periodontist;
 - (ii) A pediatric dentist;
 - (iii) A general dentist; and
 - (iv) Two (2) oral and maxillofacial surgeons.
 - (b) Duties of the committee:
 - 1. Review all permit applications and make recommendations to the board regarding those applications;
 - 2. Establish protocols for the conduct of onsite evaluations;
 - 3. Provide the board with a list of dentists to serve as onsite evaluators. All onsite evaluators must be licensed to practice dentistry in Tennessee and hold current, valid permits in comprehensive conscious sedation or deep sedation/general anesthesia and have used conscious sedation or deep sedation/general anesthesia in practice for at least three (3) years;
 - 4. Advise the Board of Dentistry regarding the continuing education courses, to be approved by the board, to satisfy the requirements in subparts (6) (a) 1. (ii) and (6) (a) 2. (ii) and in part (8) (a) 2.

(13) Onsite evaluations.

- (a) An onsite evaluation will be required for all new applicants for conscious sedation or deep sedation/general anesthesia permits. At the discretion of the board, an onsite evaluation may also be required as the result of an injury or mortality report or an anesthesia-related complaint to the board.
- (b) Onsite evaluation process.
 1. Onsite evaluations will be scheduled within ninety (90) days of the issuance of a provisional permit.
 2. Onsite evaluation teams will consist of two (2) licensed dentists who hold anesthesia permits at the same level as the applicant. An evaluation team assigned to evaluate a dentist for a limited conscious sedation permit must consist of one (1) member who holds a comprehensive conscious sedation permit and one (1) member who holds a deep sedation/general anesthesia permit. A member of the board may accompany the team as an observer.
 3. Prior to the onsite evaluation, the applicant will be provided with a self-evaluation questionnaire which will cover physical facilities, personnel, dental records, monitoring, emergency management and recovery and discharge procedures as required in the general rules.
 4. The onsite evaluation team will confirm the self-evaluation form.
 5. The onsite evaluation team will observe, at a minimum, one (1) clinical case which illustrates the administration of the sedation or anesthesia technique most often used by the applicant. Observation of a clinical case will not be required for a facilities permit.
 6. The onsite evaluation team will observe the performance of the office team in the management of one (1) or more simulated office emergencies. This observation will be required for all types of permits.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-122, and 63-5-124.

Rule 0460-3-.06, Nitrous Oxide Certification, is amended by deleting the introductory sentence in its entirety and substituting instead the following language, so that as amended, the new introductory sentence shall read:

Dental hygienists may not administer nitrous oxide to patients but may monitor nitrous oxide sedation (as defined in rule 0460-2-.07) upon becoming certified pursuant to the following process:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

Rule 0460-4-.05, Nitrous Oxide Certification, is amended by deleting the introductory sentence in its entirety and substituting instead the following language, so that as amended, the new introductory sentence shall read:

Dental assistants may not administer nitrous oxide to patients but may monitor nitrous oxide sedation (as defined in rule 0460-2-.07) upon becoming certified pursuant to the following process:

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-09)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SOLID WASTE MANAGEMENT**

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), and 68-211-111(d)(2). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

| Location | Time | Date |
|--|---------------|----------------|
| 5 th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN | 1:00 p.m. CDT | April 17, 2002 |

Individuals with disabilities who wish to participate in these proceedings (or review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact should be made no less than ten (10) days prior to the scheduled hearing date or date such party intends to review such filings, to allow time to provide such aid or services. Contact the ADA Coordinator at 401 Church Street, 7th Floor, L & C Tower, Nashville, TN 37243, 1-888-867-2757. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, e-mail greg.luke@state.tn.us, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division’s Central Office by 4:30 p.m. CDT, April 19, 2002 in order to assure consideration. The “DRAFT” rules may also be accessed for review at the Department’s World Wide Web Site located at www.state.tn.us/environment/swm.

The Division of Solid Waste Management has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

Memphis Environmental Assistance Center
Suite E- 645, Perimeter Office Park
2510 Mount Moriah Road
Memphis, TN 38115-1520
901-368-7939/1-888-891-8332

Chattanooga Environmental Assistance Center
State Office Building, Suite 550
540 McCallie Avenue
Chattanooga, TN 37402-2013
423-634-5745/1-888-891-8332

Knoxville Environmental Assistance Center
State Plaza, Suite 220
2700 Middlebrook Pike
Knoxville, TN 37921-5602
865-594-6035/1-888-891-8332

Nashville Environmental Assistance Center
711 R. S. Gass Blvd
Nashville, TN 37243
615-687-7000/1-888-891-8332

Johnson City Environmental Assistance Center
2305 Silverdale Road
Johnson City, TN 37601-2162
423-854-5400/1-888-891-8332

Jackson Environmental Assistance Center
362 Carriage House Drive
Jackson, TN 38305-2222
731-512-1300/1-888-891-8332

Cookeville Environmental Assistance Center
 1221 South Willow Avenue
 Cookeville, TN 38501
 931-432-4015/1-888-891-8332

Columbia Environmental Assistance Center
 2484 Park Plus Drive
 Columbia, TN 38401
 931-380-3371/1-888-891-8332

Additional review copies only are available at the following library locations:

E. G. Fisher Public Library
 1289 Ingleside Avenue
 Athens, TN 37371-1812
 423-745-7782

Clarksville-Montgomery Cty. Public Library
 350 Pageant Lane, Suite 501
 Clarksville, TN 37040-0005
 931-648-8826

Hardin County Library
 1013 Main Street
 Savannah, TN 38372-1903
 731-925-4314

Art Circle Public Library
 154 East First Street
 Crossville, TN 38555-4696
 931-484-6790

McIver's Grant Public Library
 204 North Mill Street
 Dyersburg, TN 38024-4631
 731-285-5032

Kingsport Public Library
 400 Broad Street
 Kingsport, TN 37660-4292
 423-229-9489

Coffee County-Manchester Public Library
 1005 Hillsboro Highway
 Manchester, TN 37355-2099
 931-723-5143

W. G. Rhea Public Library
 400 West Washington Street
 Paris, TN 38242-0456
 731-642-1702

SUBSTANCE OF PROPOSED RULES

Paragraph (5) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current paragraph in its entirety and substituting the following language:

- (5) Facility Inspection Fee – Any person who has a municipal solid waste disposal facility permit or incinerator permit and is receiving waste on July 1, 2002, is assessed a facility inspection fee of \$0.20 on each ton of municipal solid waste received. This fee shall be calculated in the same manner and paid at the same time as the surcharge in rule 1200-1-7-.08.

Authority: T.C.A. §§68-203-103(a)(1), 68-203-103(b)(3), and 68-211-111(d)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-22)

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

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at Tennessee Department of Environment and Conservation, Chattanooga Environmental Assistance Center, Meeting Room, 540 McCallie Street, Chattanooga, TN 37402 on April 18, 2002, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-1-13
HAZARDOUS SUBSTANCE SITE REMEDIALACTION**

AMENDMENTS

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

| <u>Site Number</u> | <u>Site Name</u> |
|----------------------|-------------------------------------|
| Hamilton County (33) | |
| 33-619 | American Plating Chattanooga, TN |

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of February, 2002. (02-23)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 19th day of April 2002.

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

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

SUBSTANCE OF PROPOSED RULE

Rule 1200-13-12-.08 Providers is amended by adding a new paragraph (11) which shall read as follows:

- (11) Provision will be made for graduate medical education (GME) payments subject to the availability of funds and the ability of the state to provide adequate matching funds to generate Federal Financial Participation.
 - (a) The GME funds will go to the four Medical colleges:
 1. University of Tennessee Memphis
 2. East Tennessee University
 3. Meharry
 4. Vanderbilt University
 - (b) The funds will be allocated to the four Medical colleges on the basis of filled primary care positions.
 - (c) In addition to the funds allocated to Medical colleges, a specified amount of GME funding is to be awarded to individual primary care residents who are willing to commit to serving in Tennessee in a Health Resources Shortage Area as designated by the U.S. Department of Health and Human Services.
 - (d) Prior to July 15, of each year, the Medical college will submit to TennCare a list, by name, of all residents and fellows in their sponsored residency and fellowship programs. This list will specify the specialty or subspecialty training program and the post-graduate year (PGY) in which each resident or fellow is enrolled. From this list the total of filled positions in programs sponsored by each Medical college, and in the aggregate, will be determined for the purposes of funds allocation directly for the Medical colleges and to determine the number of stipends to be offered to each Medical college.
 - (e) The amount available for allocation to the Medical colleges is the total available dollars less the designated stipend amount.

- (f) Total dollars available for allocation will be allocated to the Medical schools based on the dollar midpoint between the dollar amount that would be allocated on the basis of filled primary care positions (subpart(i)) below and the dollar amount that would be allocated on the basis of filled post-graduate year 1 (PGY 1) through post-graduate year 4 (PGY 4) positions (subpart (ii)) below. The “primary care” specialties include Primary Care, Obstetrics and Gynecology, Internal Medicine, Pediatrics, and Medicine Pediatrics.

EXAMPLE:

1. If the total amount is \$48,000,000 and the stipend amount is \$2,000,000, the amount to be allocated among the schools is \$46,000,000. The allocation is calculated as follows:

- (i) Dollars allocated based on proportion of Primary Care Positions:

| Medical School | Number of filled Primary Care Positions | Dollars |
|---------------------------------|---|---|
| University of Tennessee Memphis | A | $\frac{\$46,000,000}{A+B+C+D} \times A=S$ |
| East Tennessee University | B | $\frac{\$46,000,000}{A+B+C+D} \times B=T$ |
| Meharry | C | $\frac{\$46,000,000}{A+B+C+D} \times C=U$ |
| Vanderbilt University | D | $\frac{\$46,000,000}{A+B+C+D} \times D=V$ |
| A+B+C+D | | \$46,000,000 |

- (ii) Dollars allocated based on proportion of total PGY 1- PGY 4 positions:

| Medical School | Number of filled Positions | Dollars |
|---------------------------|----------------------------|---|
| University of Tennessee | A | $\frac{\$46,000,000}{A+B+C+D} \times A=W$ |
| East Tennessee University | B | $\frac{\$46,000,000}{A+B+C+D} \times B=X$ |
| Meharry | C | $\frac{\$46,000,000}{A+B+C+D} \times C=Y$ |
| Vanderbilt University | D | $\frac{\$46,000,000}{A+B+C+D} \times D=Z$ |
| A+B+C+D | | \$46,000,000 |

(iii) Calculation of Midpoint:

| | |
|---------------------------|-----------------|
| University of Tennessee | $\frac{S+W}{2}$ |
| East Tennessee University | $\frac{T+X}{2}$ |
| Meharry | $\frac{U+Y}{2}$ |
| Vanderbilt University | $\frac{V+Z}{2}$ |

- (g) The schools must enter a contract with the State of Tennessee which makes the following requirements of the Medical college:
1. Use the funds directly to support Graduate Medical Education.
 2. Provide training placements in a manner consistent with TennCare program Graduate Medical Education goals:
 - (i) To increase the state's number of primary care physicians;
 - (ii) To insure communities without access to care and TennCare enrollees are well served.
 3. Assure that training placements are with health care providers who provide TennCare services.
 4. Participate in the stipend program.
 5. Maintain accounting records in a manner that will allow for the identification of expenditures made with the funding received from an MCO designated by the State and TennCare for the purpose of GME.
 6. Provide annual reports and reports specified which shall include at a minimum the following:
 - (i) Description of how the funds were used in the support of graduate medical education;
 - (ii) A list of Health care providers participating in the training program;
 - (iii) Number of residents by year of training and specialty;
 - (iv) Names of residents receiving stipends; and
 - (v) Placement sites of physicians graduating from their program.
 7. Abide by all other requirements as set out in the Endowment Grant Contract (stipend contract).
- (h) The contract will be renewed annually depending on the availability of federal and state funds for Graduate Medical Education.

- (i) The contracts with the Medical colleges will be monitored through a contract between the Bureau of TennCare and the Office of Program Accountability Review in the Department of Finance and Administration.
- (j) The award of a conditional stipend supplement of \$15,000 per year to primary care residents during a three (3) or four (4) year residency will require a payback of at least three (3) years of primary care practice in a Health Resource Shortage Area in Tennessee after licensing. A four-year payback will be required for four (4) years of stipend supplement for OB-GYN and Med-Ped residents. The Medical colleges will be responsible for recruiting and selecting residents for the program. The Medical college will establish, within its Graduate Medical Education Office, a program to recruit incoming primary care PGY1 residents into its stipend supplement program. The stipend recipient will receive payment quarterly from the Medical college. The State of Tennessee on receipt of an invoice will reimburse the Medical college. The resident will be required to sign a contract with the State of Tennessee and the Medical college prior to his or her receipt of the stipend.
 - 1. The contract requires the following conditions for the payback:
 - (i) A location must be selected by the resident and approved in writing by the Bureau of TennCare prior to graduation.
 - (ii) There will be a three (3) to one (1) dollar payback if the resident defaults.
 - (iii) The resident will obtain and maintain malpractice liability insurance in a designated amount as set out in the Endowment Grant Contract.
 - (iv) The stipend recipient must enter into appropriate provider agreement(s) with one or more Managed Care Organizations participating with the Bureau of TennCare. The stipend recipient must enroll with a sufficient number of MCOs that provide insurance coverage to at least 51% of TennCare participants enrolled in the provider's primary county of practice. In the event that one or more MCOs have closed enrollment to new providers which would not allow the stipend recipient to meet this criteria, the stipend recipient must demonstrate to TennCare that a good faith effort was made and that the applicant has enrolled in all other MCOs accepting new providers.
 - (ii) The stipend recipient must provide service at a facility that has a written policy that ensures that 24-hour, 7-day a week coverage is available.
 - 2. The number of stipends allocated to each Medical college is based on the proportion of each Medical college's number of primary care residents in their first year of residency to total PGY1 primary care residents.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2002. (02-29)

**DEPARTMENT OF HEALTH - 1200
BOARD FOR LICENSING HEALTH CARE FACILITIES
DIVISION OF HEALTH CARE FACILITIES**

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. 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 on the ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 p.m. (CDT) on the 15th day of April, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (23) in its entirety and renumbering the remaining paragraphs accordingly, and is further amended by adding the following language as two (2), new, appropriately numbered paragraphs:

- () Member of the professional medical community. A professional employed by the facility and on the premises at the time of such voluntary delivery.
- () "Voluntary delivery" means the action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a facility, as defined by this section, with any facility employee or member of the professional medical community at such facility without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

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

Rule 1200-8-1-.05, Admissions, Discharges, and Transfers is amended by adding the following language as new paragraph (24):

- (24) Infant Abandonment.
 - (a) Any facility shall receive possession of any newborn infant left on facility premises with any facility employee or member of the professional medical community, if the infant:
 1. Was born within the preceding seventy-two (72) hour period, as determined within a reasonable degree of medical certainty;

2. Is left in an unharmed condition; and
 3. Is voluntarily left by a person who purported to be the child's mother and who did not express an intention of returning for the infant.
- (b) The facility, any facility employee and any member of the professional medical community at such facility shall inquire whenever possible about the medical history of the mother or newborn and whenever possible shall seek the identity of the mother, infant, or the father of the infant. The facility shall also inform the mother that she is not required to respond, but that such information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the Department of Children's Services. The facility may provide the parent contact information regarding relevant social service agencies, shall provide the mother the name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the facility shall also provide the mother with both orally delivered and written information concerning the requirements of these rules relating to recovery of the child and abandonment of the child.
- (c) The facility, any facility employee and any member of the professional medical community at such facility shall perform any act necessary to protect the physical health or safety of the child.
- (d) As soon as reasonably possible, and no later than twenty-four (24) hours of receiving a newborn infant, the facility shall contact the Department of Children's Services, but shall not do so before the mother leaves the hospital premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.
- (e) Notwithstanding any provision of law to the contrary, any facility, any facility employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of these rules, and no lawsuit shall be predicated thereon; provided, however, that nothing in these rules shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

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

Rule 1200-8-24-.01, Definitions, is amended by adding the following language as new paragraphs (22) and (34), and renumbering the other paragraphs accordingly:

- (22) Member of the professional medical community. A professional employed by the facility and on the premises at the time of such voluntary delivery.
- (34) "Voluntary delivery" means the action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a facility, as defined by this section, with any facility employee or member of the professional medical community at such facility without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210 and 68-11-213.

Rule 1200-8-24-.05, Admissions, Discharges, and Transfers, is amended by adding the following language as new paragraph (11):

(11) Infant Abandonment.

- (a) Any facility shall receive possession of any newborn infant left on facility premises with any facility employee or member of the professional medical community, if the infant:
 - 1. Was born within the preceding seventy-two (72) hour period, as determined within a reasonable degree of medical certainty;
 - 2. Is left in an unharmed condition; and
 - 3. Is voluntarily left by a person who purported to be the child's mother and who did not express an intention of returning for the infant.
- (b) The facility, any facility employee and any member of the professional medical community at such facility shall inquire whenever possible about the medical history of the mother or newborn and whenever possible shall seek the identity of the mother, infant, or the father of the infant. The facility shall also inform the mother that she is not required to respond, but that such information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the Department of Children's Services. The facility may provide the parent contact information regarding relevant social service agencies, shall provide the mother the name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the facility shall also provide the mother with both orally delivered and written information concerning the requirements of these rules relating to recovery of the child and abandonment of the child.
- (c) The facility, any facility employee and any member of the professional medical community at such facility shall perform any act necessary to protect the physical health or safety of the child.
- (d) As soon as reasonably possible, and no later than twenty-four (24) hours of receiving a newborn infant, the facility shall contact the Department of Children's Services, but shall not do so before the mother leaves the hospital premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.
- (e) Notwithstanding any provision of law to the contrary, any facility, any facility employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of these rules, and no lawsuit shall be predicated thereon; provided, however, that nothing in these rules shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2002. (02-28)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION**

CHAPTERS 1240-1-51

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments pursuant to Tennessee Code Annotated §§71-3-151—71-3-165. 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 15th Floor Puett Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 1:30pm Central Time on Wednesday April 17, 2002.

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 days (10) 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, Fran McKinney, at 400 Deadrack Street, Nashville, Tennessee, (615) 313-5563 (TDD)- (615) 532-8569.

For a copy of the proposed rule contact: Darryl Wells, Legal Assistant, Office of General Counsel, 400 Deaderick Street, Nashville, Tennessee 37248-0006, Telephone: (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION**

**1240-1-51
PERIODS OF ELIGIBILITY**

AMENDMENTS

Part 2 of subparagraph (a) of paragraph (3) of Rule 1240-1-51-.01, Eligibility for Families First-Time Limits, is amended by deleting part 2 in its entirety and by substituting instead the following new part 2 so that, as amended, part 2 shall read as follows:

2. Extensions and Re-Entry to Families First will be granted to AGs who have good cause:
 - (i) Good cause will be considered to exist when all of the following criteria are met:
 - (I) the participant is in compliance with the PRP at the time good cause is determined;
 - (II) the participant has been in substantial compliance with the PRP during the entire current period of eligibility (i.e., for the last eighteen (18) months or from the date of the PRP). In re-entry situations, this will be the most recent period of eligibility;
 - (III) the participant is not currently refusing employment or voluntarily quitting employment without good cause;
 - (IV) the AG's income, including the income of any sanctioned individual, is less than the following amount:

- I. The SPA for the AG size, plus an amount where the total would be equal to Fifty Per Cent (50%) of the Standard of Need for the AG size when the AG reaches the end of an eighteenth (18) month period of eligibility or re-enters Families First after closing due to the sixty (60) month time limit; or
- II. For AGs that would close due to the sixty (60) months, time limit if not for good cause extension, the SPA for the AG size plus an amount where the total would be equal to seventy percent (70%) of the Standard of Need for the AG size for a maximum of six (6) months; then following the initial six (6) month extension:
 - A. The SPA for the AG size plus an amount where the total would be equal to sixty percent (60%) of the Standard of Need for the AG size for a maximum of six (6) months; then following this second six (6) month extension:
 - B. The SPA for the AG size plus an amount where the total would be equal to 50% of the Standard of Need for the AG size thereafter.

Authority: TCA §§4-5-202; 71-1-105(12); 71-3-157(f); Federal Waiver of July 26, 1996 pursuant to Section 1115 of the Social Security Act.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2002. (02-30)

TENNESSEE MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-18-211. 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 3rd day of May, 2002.

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

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

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

SUBSTANCE OF PROPOSED RULES**AMENDMENT**

Rule 0870-1-.12, Continuing Education, is amended by deleting subparagraphs (2) (a), (3) (a), and (3) (b) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a), (3) (a), and (3) (b) shall read:

- (2) (a) Each licensed massage therapist must annually (January 1 – December 31) attend and complete ten (10) hours of massage therapy related continuing education in courses approved by the Board plus two and one-half (2½) discretionary hours. Continuing education completed that is in excess of the annual requirement may be counted towards the immediate subsequent year's requirement.
- (3) (a) Notwithstanding the provisions of subparagraph (2) (a), the due date for attendance and completion of the required continuing education hours is December 31st of every calendar year.
- (3) (b) Notwithstanding the provisions of subparagraph (2) (a), each massage therapist must, on a Board provided form, attest to attendance and completion of the required continuing education hours and that such hours were obtained during the preceding calendar year.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-18-211.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-10)

**THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES - 0940
DIVISION OF MENTAL HEALTH SERVICES**

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new rules pursuant to Tenn. Code Ann., Section 33-1-302, 305, and 307. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code. Ann., Section 4-5-204, and will take place in the Tennessee Room, ground floor, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee, at 1:00 p.m., central time on the 25th day of April, 2002.

Written comments will be considered if received by close of business, May 28, 2002, at the DMHDD Office of Legal Counsel, 2600 Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to the scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Joe Swinford, 5th Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243. Mr. Swinford's telephone number is (615) 532-6700; the department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

For a copy of the notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, 2600 Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6520

SUBSTANCE OF PROPOSED RULES

CHAPTER 0940-3-7 (SEVERE IMPAIRMENT)

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0940-3-7-.01 PURPOSE.

- (1) This chapter establishes a process by which a treatment resource may seek approval to provide services to individuals whose psychiatric condition meets the criteria for “severe impairment” as defined in TCA §33-6-301. To be eligible, a treatment resource must provide a range of psychiatric services to persons who are believed to be mentally ill, including twenty-four (24) hour crisis services, supervised observation beds, and participation in mandatory pre-screening under TCA §33-6-104.
- (2) If the treatment resource meets these criteria, the Department may approve the treatment resource to provide services to individuals with severe impairments under TCA Title 33, Chapter 6, Part 3.

0940-3-7-.02 DEFINITIONS.

- (1) For the purpose of these rules, the terms listed below shall be interpreted as follows:
 - (a) “Commissioner” means the commissioner of mental health and developmental disabilities or his/her authorized representative.
 - (b) “Department” means the department of mental health and developmental disabilities;
 - (c) “Chief officer” means the person with overall authority for a public or private hospital or treatment resource, or the person’s designee.
 - (d) “Mandatory pre-screening agent” means a person meeting the qualifications for a qualified mental health professional as defined in TCA §33-1-101 and specified training criteria under TCA §33-6-427 and who is designated by the Commissioner to perform mandatory pre-screening of individuals presenting for voluntary or emergency involuntary admission.
 - (e) “Severe impairment” means a condition in which an adult or an emancipated child:
 1. As a result of a mental illness or serious emotional disturbance:

- (i) Is in danger of serious physical harm resulting from the person’s failure to provide for the person’s essential human needs of health or safety, or
 - (ii) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over the person’s actions, and
2. Is not receiving care that is essential for the person’s health or safety.
- (f) “24 hour crisis services” means mental health services that are available twenty-four hours a day and seven days a week, and are intended to stabilize the individual to prevent the crisis from escalating.
 - (g) “Triage and referral” means a service that provides preliminary diagnosis, assessment and evaluation for the purpose of directing the service recipient to services that will appropriately address his or her needs.
 - (h) “Supervised observation bed” means a bed in the designated facility which provides, for up to 72 continuous hours, a safe environment for a service recipient who, in the opinion of the examining physicians, requires care, observation, and treatment of the service recipient’s psychiatric symptoms.
 - (i) “Continuum of care” means an array of mental health services and supports, which range from least restrictive to most restrictive.

0940-3-7- .03 PROCESS FOR DESIGNATION TO PROVIDE SERVICES TO PERSONS WITH SEVERE IMPAIRMENTS.

- (1) Requirements for Application: The applicant must provide documentation that the facility is a treatment resource as defined under TCA §33-1-101(24) and is licensed by the Department of Health and/or Department of Mental Health and Developmental Disabilities.
- (2) Organizational Documentation: The applicant must provide the following:
 - (a) The name, address, and other background and identifying information of the applicant including type of agency, background and history of agency, services currently provided and statement of agency values;
 - (b) The name, address, and other background and identifying information of the person or persons responsible for the operation of the service to include present position in the agency, educational history, credentials, and work experience;
 - (c) A description of the location, facility lay out, and type of facility where the service will be operated;
 - (d) Evidence of license, certificate of need (as appropriate), and authorization from Secretary of State to do business in Tennessee;
 - (e) The signature of the applicant, or of the person charged by the applicant, for certifying the correctness and completeness of the application, and for ensuring compliance with the service standards;
 - (f) The proposed organization and the organizational relationship to the facility’s overall administrative structure;
 - (g) Relationship of the service location to other medical or psychiatric services provided;

- (h) Plan for or evidence of on site psychiatric services, 24-hour crisis services, supervised observation beds and participation in mandatory prescreening;
- (3) Service Description: The applicant must provide a proposed service description, which addresses:
- (a) A three year plan, updated annually, that includes measurable goals and objectives that are targeted toward providing services to service recipients in the most effective and least restrictive treatment environment possible;
 - (b) How this service links to other providers of psychiatric services in the community, including mandatory prescreening agents;
 - (c) Policy for coordinating transfer to involuntary in-patient treatment resources;
 - (d) Staffing plan that indicates the types of staff, qualifications and numbers of staff by shift to be employed by the treatment resource for this purpose;
 - (e) Plan for adequately training all staff to perform designated job responsibilities including orientation and ongoing training. Plan must include training that is relative to services to persons with severe impairment as defined in TCA §33-6-301;
 - (f) Plan for transitioning and follow up activities for service recipients who are released from the program or referred to other services to include assurance of continuity of care;
 - (g) A plan or agreement with law enforcement (or other transporting agent, if appropriate) to transport candidates for mental health emergency services;
 - (h) Policy to ensure safety of service recipient and staff between arrival at site and admission (include behavioral management and medical emergency);
 - (i) Policy to ensure that the rights of service recipients are protected as indicated under Title 33, Tennessee Code Annotated;
- (4) Policy and Procedures: The applicant must provide written policies and procedures on the following:
- (a) Policy on notice of rights including those indicated under Title 33, Tennessee Code Annotated;
 - (b) Policies on ensuring physician assessments are completed within the specific time period as set out in Title 33, Chapter 6, Part 3, Tennessee Code Annotated;
 - (c) Policy which addresses the procedures for the prescription, procurement, storage and administration of medication, including procedures for verbal and phone orders;
 - (d) Policy for determining capacity to consent to treatment.
 - (e) Policy on admission authorization for individuals who lack capacity to consent to treatment including when emergency commitment or other referral is appropriate.
 - (f) Policy on the program's conflict resolution procedure (both licensees and non DMHDD licensees must comply with the requirements of Title 33, Chapter 2, Part 6, Tennessee Code Annotated);

- (g) Policy on Treatment Review Committee responsibilities under TCA §33-6-107 if the facility is an inpatient provider;
 - (h) Policy for arranging transportation of service recipients to aftercare placements, alternative treatment sites or voluntary hospitalization;
 - (i) Policy for addressing medical emergencies including transportation to another treatment service when necessary;
 - (j) Policy for transportation of a service recipient in need of emergency psychiatric hospitalization;
 - (k) Release procedures including provision for when a service recipient initiates the release;
 - (l) Policy on use of isolation and restraint;
 - (m) Policy on service recipient records including documentation requirements and provisions for ensuring confidentiality;
 - (n) Policy on notification of persons designated by the service recipient in case of an emergency;
 - (o) Policy on use of Declarations for Mental Health Treatment, (TCA §33-2-1202), conservator and attorney-in fact under a durable power of attorney for health care.
 - (p) Procedure for addressing service recipient complaints.
- (5) The applicant must include a letter of support from the appropriate mental health regional planning council.

0940-3-7-.04 REVIEW AND APPROVAL PROCESS.

- (1) Upon review of the application and information obtained from a minimum of one (1) site visit, the Commissioner will approve or deny the application. If the application is denied, a request for review of denial can be made in writing to the Commissioner within fifteen (15) days, excluding holidays and weekends. The Commissioner's decision concerning designation to provide services to persons with severe impairments is final.
- (2) Information submitted must follow the format of this Rule. Failure to submit all required information may disqualify the application from consideration.

0940-3-7-.05 RENEWAL AND MAINTAINING DESIGNATION.

- (1) The Commissioner will annually review and designate treatment resource(s) to provide these services.
- (2) To renew designation, a treatment resource must continue to meet initial application requirements.
- (3) Facility must cooperate with monitoring by the Department or designee, including on-site visits.
- (4) Facility must participate in data collection and service evaluation as required by the Department or designee.

0940-3-7-.06 TERMINATION.

- (1) The Commissioner may revoke designation at any time with a written notice:
 - (a) for good cause,
 - (b) failure to meet minimum requirements,
 - (c) violation of the law.
- (2) A designated treatment resource may terminate the designation with a thirty (30) day written notice to the Commissioner.

Authority: T. C. A. §§4-5-202 and 204, 33-1-302 and 305; and Title 33, Chapter 6, Part 3, Tenn. Code Ann.

SUBSTANCE OF PROPOSED RULE REPEAL

**CHAPTER 0940-3-4
OUT PATIENT SERVICES**

0940-3-4-.01 Definition of “Qualified Mental Health Professional,” under Title 33, Chapter 6, Part 2, Tenn. Code Ann., is repealed.

This rule is repealed because there is now a statutory definition in Tenn. Code Ann., Section 33-1-101(18).

Authority: T.C.A. §§4-5-202, and 33-1-303 and 33-1-305.

SUBSTANCE OF PROPOSED RULES**CHAPTER 0940-3-6 (ISOLATION AND RESTRAINT)****TABLE OF CONTENTS**

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0940-3-6-.01 SCOPE. This chapter applies to all facilities providing inpatient mental health services in a hospital without regard to source of licensure, certification or accreditation. Isolation and restraint may be used in such settings only in compliance with this chapter.

Isolation or restraint in mental health treatment settings other than hospitals is governed by chapters applicable to those settings. Chemical restraint is permissible only in a hospital and in compliance with this chapter.

0940-3-6-.02 DEFINITIONS.

- (1) **Chemical Restraint:** A medication that is used to restrict the service recipient's freedom of movement for the emergency control of behavior. Chemical restraints are medications used in addition to, or in replacement of, the service recipient's regular drug regimen to control extreme behavior during an emergency. The medications that comprise the service recipient's regular medical regimen (including PRN medications) are not considered chemical restraints, even if their purpose is to control ongoing behavior.
- (2) **Conservator:** A court appointed conservator or a Veterans Administration guardian.
- (3) **Hospital:** A licensed public or private inpatient treatment resource or hospital or a part of a hospital that provides inpatient care and treatment for persons with mental illness or serious emotional disturbance.
- (4) **Isolation:** The confinement of a service recipient alone in a room or an area where the service recipient is physically prevented from leaving. This definition is not limited to instances in which a service recipient is confined by a locked or closed door. This definition explicitly excludes the segregation of a service recipient for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines.

Isolation does not include confinement to a locked unit or ward where other individuals are present. Isolation is not solely confinement of a service recipient to an area, but separation of the service recipient from other persons.

Isolation does not include time-out, which is a behavior management procedure in which, contingent upon the demonstration of undesired behavior, the opportunity for positive reinforcement is withheld, which may involve the voluntary separation of the individual service recipient from others.

- (5) **Licensed Independent Practitioner:** An individual licensed by the Tennessee Health Related Boards as a:
 - (a) medical doctor;
 - (b) doctor of osteopathy;
 - (c) physician assistant;
 - (d) certified nurse practitioner;
 - (e) registered nurse with a masters degree in psychiatric nursing and certification to prescribe medication;
 - (f) psychologist with health service provider designation;
 - (g) licensed clinical social worker;
 - (h) licensed professional counselor;

- (i) senior psychological examiner; or
- (j) other licensed mental health professional who is permitted by law to practice independently.

In addition, to be considered a licensed independent practitioner for purposes of this chapter, the individual must be privileged by the hospital medical staff and governing body to authorize the use of isolation and restraint.

- (6) **Licensed Mental Health Professional:** For purposes of this chapter, a licensed mental health professional is an individual who meets the requirements in the definition of Licensed Independent Practitioner or who is licensed by the Tennessee Health Related Boards as a registered nurse, licensed practical nurse, psychological examiner, or substance abuse counselor.
- (7) **Medical Director:** The physician designated to have overall responsibility for the provision of psychiatric care at the hospital. If the Medical Director is the treating physician, the chief officer must appoint an alternate for review purposes under this chapter.
- (8) **Physical Restraint:** Any method, including physical holding or use of a mechanical device, material, or equipment attached or adjacent to an individual service recipient's body, that he or she cannot easily remove, and that restricts freedom of movement or normal access to one's body. There are two types of physical restraint:
 - (a) **Physical Holding:** The use of staff body contact with a service recipient in order to restrict freedom of movement or normal access to one's body.

Physical holding does not include the use of physical touch associated with prompting, comforting or assisting that does not prevent the individual service recipient's freedom of movement or normal access to his or her body. In addition, physical holding does not include "physical escort" which means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing the individual to walk to a safe location.

- (b) **Mechanical Restraint:** For purposes of this chapter, the application of a mechanical device, material, or equipment attached or adjacent to the service recipient's body that the service recipient cannot easily remove and that restricts freedom of movement or normal access to the service recipient's body. This includes the use of ambulatory restraint devices except as noted under the other exceptions below.

For purposes of this chapter, physical restraint does not include the use of:

1. any restrictive devices or manual methods employed by a law enforcement agent or other public safety officer to maintain custody, detention, or public safety during the transport of an individual under the jurisdiction of the criminal justice system or juveniles with charges in the juvenile justice system; or
2. restraints for medical immobilization, adaptive support, or medical protection; or
3. restrictive devices administratively authorized to ensure the safety of the service recipient or others when an involuntary committed service recipient must be transported; or
4. restrictive mechanical ambulatory devices used for the service recipient who:
 - (i) exhibits intractable behavior which is severely self-injurious or injurious to others, and
 - (ii) has not responded to usual and customary interventions, and

- (iii) has restrictive mechanical ambulatory devices provided for and carried out in conformity with the service recipient's behavioral plan in the individualized treatment plan.

This behavioral plan must be re-evaluated at least every seven (7) days by the service recipient's treatment team. Any use of restrictive mechanical ambulatory devices must be reviewed by the Medical Director or designee every 24 hours.

- (9) PRN: An order which is written to allow a medication or treatment to be given on an as-needed basis.
- (10) Seclusion: See Isolation.
- (11) Service Recipient: For purposes of this chapter, an individual receiving inpatient mental health services in a hospital.

0940-3-6-.03 PURPOSE OF ISOLATION OR RESTRAINT. Isolation or restraint may be used only in emergency situations when necessary to assure the physical safety of the service recipient or a person nearby or to prevent significant destruction of property, if the process of destroying the property puts the service recipient or persons nearby in danger. Isolation or restraint may be used only when other less intrusive or restrictive methods have been ineffective or determined to be inappropriate. Isolation or restraint must be terminated when the behavior justifying its use no longer exists.

Isolation or restraint must not be imposed in any form as a means of coercion, discipline, convenience or retaliation by staff.

0940-3-6-.04 APPLICATION OF THIS CHAPTER. This chapter applies to any hospital providing inpatient mental health services.

0940-3-6-.05 POLICIES AND PROCEDURES. Any hospital that provides inpatient mental health services and uses isolation or restraint must develop and employ policies and procedures that ensure compliance with this chapter. Policies and procedures must identify approved techniques for the safe and appropriate application and removal of isolation and restraint, including physical holding. Policies and procedures must also identify approved devices, materials, and/or equipment that is approved by the hospital for use as mechanical restraints. No policy or procedure may authorize a removal of clothing from a service recipient in conjunction with the use of isolation or restraint, other than that which is determined to place the service recipient or others at risk.

0940-3-6-.06 INITIATION OF ISOLATION OR PHYSICAL RESTRAINT IN THE ABSENCE OF A LICENSED INDEPENDENT PRACTITIONER. In the absence of a licensed independent practitioner, isolation or restraint may be initiated by a licensed mental health professional or by non-licensed mental health personnel with a minimum of a bachelor's degree or two (2) years of full time equivalent experience in a mental health inpatient or residential treatment setting. Any staff member who initiates isolation or physical restraint must have documented training in compliance with this chapter. Staff who are authorized to take orders must immediately contact a licensed independent practitioner regarding authorization for the isolation or restraint. Chemical restraint can be initiated only by order of a physician.

0940-3-6-.07 AUTHORIZATION.

- (1) The use of isolation or physical restraint shall be authorized only by a licensed independent practitioner. **ONLY A PHYSICIAN MAY AUTHORIZE CHEMICAL RESTRAINT.** All authorizations must specify isolation or the type of restraint that is authorized. If mechanical restraint is authorized, the authorization must specify the type of restraint device(s) to be utilized and the number of points of restraint. A new authorization is required if there is a change in the intervention utilized, including increasing the number of points of restraint or the application of additional restraint devices. If the use of isolation or restraint has been discontinued, it may be used again only with a new authorization, even if a previous order's time limits have not yet expired. Isolation or restraint, including chemical restraint, cannot be ordered on a PRN basis. If the licensed independent practitioner who authorized the use of isolation, mechanical restraint, or physical holding restraint is not the service recipient's treating physician, the treating physician shall be consulted as soon as possible.

0940-3-6-.08 LENGTH OF AUTHORIZATION. A licensed independent practitioner must see the service recipient to assess the need for isolation or physical restraint within one hour after initiation. When chemical restraint is used, a physician must see and assess the service recipient within one hour of administration of medication used for chemical restraint.

Each order for chemical restraint is limited to a single dose of medication to be administered at a single point in time. Each order for mechanical restraint or isolation is limited to a maximum of four (4) hours for adults, two (2) hours for youth ages 9 through 17, and one (1) hour for children under age 9. Each order for physical holding for any age service recipient is limited to a maximum of thirty (30) minutes.

0940-3-6-.09 RENEWAL.

- (1) A licensed independent practitioner can renew the original order, including by verbal authorization, when a service recipient continues to need isolation or physical restraint beyond the time limits of the original order. Renewals must comply with the time limits specified in 0940-3-6-.08, for up to a total of 24 continuous hours. The hospital's medical director or designee must then review the case and may authorize the licensed independent practitioner to renew the order for isolation or restraint in accordance with the time limits specified in 0940-3-6-.08 for up to a total of another 24 hours. If isolation or restraint is still indicated after the second 24 hour period, the hospital's medical director must again review the case. This review process by the hospital's medical director must occur at least every 24 hours as long as the service recipient is in isolation or physical restraint. A licensed independent practitioner must conduct a face-to-face assessment at least every 8 hours for service recipients ages 18 and older and every 4 hours for service recipients ages 17 and younger.

0940-3-6-.10 ASSESSMENTS. The hospital must conduct the following types of assessments:

- (1) Risk Assessments:
 - (a) Each service recipient must be assessed to identify individuals at risk of need for external controls such as isolation or restraint for his or her behavior. This assessment should include identification of any specific situations or issues, including cultural issues, that could potentially trigger behavior that might require the use of isolation or restraint.
 - (b) Each service recipient must be assessed to identify potential risks to the service recipient that might be associated with the use of isolation or restraint. The assessment shall include risks of physical/medical and psychological/emotional harm associated with the use of isolation or restraint, including risks related to cultural issues.

Risk assessments must be performed at admission by a licensed independent practitioner and updated by a licensed independent practitioner or other licensed mental health professional when there is significant change in mental status, behavior, or physical/medical condition. Risk assessments must be documented in the service recipient's record.

- (2) **Assessment of Need:** Prior to the use of isolation or restraint, the service recipient must have an assessment that supports that the need for isolation or restraint is necessary to assure the physical safety of the service recipient or a person nearby and that all less restrictive interventions have been ineffective or determined to be inappropriate. This assessment is necessary upon initiation of isolation or restraint at the time of the emergency, or, if initiated without the participation of a licensed independent practitioner, must be performed, face to face, within one hour of the initiation of isolation or restraint by a licensed independent practitioner. If a face-to-face assessment by a licensed independent practitioner has not occurred within one hour, use of isolation or restraint must be discontinued. The assessment of need must be documented in the service recipient's record.

0940-3-6-.11 BEHAVIORAL CRITERIA FOR RELEASE. Behavioral criteria for release from isolation or physical restraint must be specified by a licensed independent practitioner or a licensed mental health professional who can authorize initiation of isolation or physical restraint. The behavioral criteria must be documented in the service recipient's record and must be communicated to the service recipient as soon as possible during the isolation or physical restraint procedure.

0940-3-6-.12 MONITORING AND ASSESSMENT OF CONTINUED NEED. All results of monitoring must be documented in the service recipient's record.

Assessment of continued need of isolation or physical restraint: To continue the use of isolation or physical restraint, there must be ongoing assessment of continued need for isolation or restraint, including behavior which justifies the continued use of isolation or restraint and that the established behavioral criteria for release have not been met. Use of restraint or isolation must be monitored as follows:

- (1) **Isolation.** A service recipient in isolation must be monitored by staff trained in monitoring isolation. Monitoring activities must comply with the following:
- (a) The service recipient must be continuously monitored. For the first hour, monitoring must be by direct visual observation. After the first hour, monitoring may be via video camera WITH audio; if video monitoring is utilized a staff member must continuously monitor the video.
 - (b) At intervals no greater than 15 minutes, staff must document visual observations of behavior regarding continued need for isolation, observation of respiration, untoward effects of isolation and signs of distress. Such checks must be made via direct visual observation of the service recipient. Electronic monitoring for 15-minute checks is not allowed.
 - (c) At intervals no greater than one (1) hour, the service recipient must be allowed the opportunity to toilet and take nourishment and water. This must be documented in the service recipient's record.
 - (d) At intervals no greater than one (1) hour, a licensed independent practitioner or other licensed mental health professional authorized to initiate isolation under this chapter must document an assessment of continued need for isolation.
 - (e) **Release from Isolation:** The service recipient must be released from isolation when the need for isolation no longer exists. Either a licensed independent practitioner or other licensed mental health professional who has been authorized to initiate isolation under this chapter must document in the service recipient's

record an assessment of the service recipient's behavior and mental and physical status at the time the service recipient is released from isolation. Documentation shall include the duration of the use of isolation.

(2) **Physical Restraint Monitoring.** Monitoring activities must comply with the following:

- (a) **Mechanical Restraint:** A service recipient in mechanical restraint must be monitored by staff trained in the monitoring of mechanical restraint. Staff must remain in the immediate physical presence of and in the same room as a service recipient who is in restraint.
1. At intervals no greater than 15 minutes, staff must document visual observations of behavior regarding the continued need for restraint; check and document the application of the restraint; respiration, untoward effects of restraint and signs of distress.
 2. At intervals no greater than one (1) hour, the service recipient must be allowed the opportunity to toilet, take nourishment and water, and be checked for range of motion. This must be documented in the service recipient's record.
 3. At intervals no greater than one (1) hour, a licensed independent practitioner or other licensed mental health professional authorized to initiate isolation under this chapter must document an assessment of continued need for mechanical restraint.
 4. **Release from Mechanical Restraint:** Mechanical restraints must be removed when the need for mechanical restraint no longer exists. Either a licensed independent practitioner or other licensed mental health professional who has been authorized to initiate restraint under this chapter must document in the service recipient's record an assessment of the service recipient's behavior and mental and physical status at the time the service recipient is released from restraint. Documentation shall include the duration of the use of mechanical restraint.
- (b) **Physical Holding:** A service recipient in a physical hold must be monitored by staff trained in the monitoring of physical restraint. Monitoring activities must comply with the following:
1. A trained staff member who is an observer must be present at all times while a service recipient is in a physical hold.
 2. At intervals no greater than 15 minutes, the staff member observing the physical hold must document visual observations of behavior regarding continued need for restraint; check and document application of the restraint, respiration, negative effects of restraint, and signs of distress. In addition, there must be an evaluation of the fatigue of the staff employing the hold.
 3. At intervals no greater than one (1) hour, the service recipient must be allowed the opportunity to toilet, take nourishment and water, and be checked for range of motion. This must be documented in the service recipient's record.
 4. At intervals no greater than thirty (30) minutes, a licensed independent practitioner or other licensed mental health professional authorized to initiate isolation under this chapter must document an assessment of continued need for physical holding.
 5. **Release from Physical Holding:** A service recipient must be released from physical holding when the need for physical holding no longer exists. Either a licensed independent practitioner or other licensed mental health professional who has been authorized to initiate restraint under this chapter must docu-

ment in the service recipient's record an assessment of the service recipient's behavior and mental and physical status at the time the service recipient is released from restraint. Documentation shall include the duration of the use of physical holding.

- (3) **Chemical Restraint Monitoring:** A service recipient who has been chemically restrained must be continuously observed by a staff member who is in the immediate physical presence and in the same room as the service recipient and who is trained to monitor chemical restraint. Particular attention must be given to safety issues such as preventing falls. Monitoring activities must comply with the following:
 - (a) If intravenous medication is administered, the service recipient must be examined by either a physician, licensed nurse or physician assistant within five (5) minutes of administration and at least every ten (10) minutes thereafter for the next thirty (30) minutes, if possible based on the service recipient's behavior, for mental status, blood pressure, pulse, respiration, signs of distress, signs and symptoms of adverse drug reaction and other issues as indicated. These examinations must be documented in the service recipient's record.
 - (b) If intramuscular medication is administered, the service recipient must be examined by either a physician, licensed nurse or physician assistant within fifteen (15) minutes of administration and at least every fifteen (15) minutes for the first hour, if possible based on the service recipient's behavior, for mental status, blood pressure, pulse, respiration, signs of distress, signs and symptoms of adverse drug reaction and other issues as indicated. These examinations must be documented in the service recipient's record.
 - (c) If oral medication is administered, the service recipient must be examined by either a physician, licensed nurse or physician assistant within thirty (30) minutes of the first dosage and every thirty (30) minutes for the first hour, if possible based on the service recipient's behavior, for mental status, blood pressure, pulse, respiration, signs of distress, signs and symptoms of adverse drug reaction, and other issues as indicated. These examinations must be documented in the service recipient's record.
 - (d) In addition to the above monitoring requirements for chemical restraint, staff must document visual observations of the service recipient's behavior at intervals no greater than fifteen (15) minutes. The service recipient must be monitored for a time period defined by the prescriber as part of the chemical restraint order. If the prescriber does not define the time period for monitoring, the face-to-face observation shall continue for two (2) hours.
- (4) **Concurrent Use:** Concurrent use of either isolation or physical restraint with chemical restraint must meet the monitoring requirements for both interventions.

0940-3-6-.13 LOCATION OF USE. Isolation may be provided only in a clean, dry, comfortable location that does not contain anything with which the service recipient might harm self or others. Rooms used for isolation must be designed so that the entire room is visible from the isolation room's observation window even if a video camera is used. Restraint must be imposed in an area as private as possible.

0940-3-6-.14 TERMINATION. Isolation or physical restraint must be terminated when the behavior justifying its use no longer exists or if the face-to-face assessments required under this chapter do not occur. Any threat to a service recipient's physical health or emotional well being shall require immediate release.

0940-3-6-.15 NOTIFICATION OF LEGAL SURROGATES. The hospital must notify the parent/guardian or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes mental health care, or surrogate decision-maker selected in accordance with TCA §§33—3—219 - 33—3—220 of an adult of the use of restraint or isolation as soon as possible but no later than 12 hours following initiation of the intervention. Unsuccessful attempts to notify must be documented in the service recipient's record. The parent/guardian, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes mental health care, or surrogate decision-maker, as appropriate, may modify the notice requirements in a written agreement. Such individuals must be provided the opportunity to participate in a discussion of the episode.

0940-3-6-.16 NOTIFICATION OF FAMILY/SIGNIFICANT OTHER. The hospital may notify other family members or significant others as specified in 0940-3-6-.15 with a signed release by: the service recipient, or legal surrogate, or the authorization by a Treatment Review Committee for an involuntarily committed service recipient or for a voluntary service recipient who lacks capacity to make decisions about release of information, and agreement by the family/significant other that he/she wishes to be notified.

0940-3-6-.17 INTERNAL REVIEWS. The hospital must provide and document three types of reviews:

- (1) **Service Recipient Review.** Unless clinically contraindicated, a licensed independent practitioner or mental health personnel who are authorized to initiate isolation or restraint must review the episode upon termination with the service recipient and with his or her legal surrogate, if available. The review shall occur as soon as possible following termination, but no later than twenty-four (24) hours following termination of isolation or restraint. The review must address the event, any identified reasons for the behavior, and strive to alleviate any trauma related to the episode. This review must be documented in the service recipient's record. If a review is clinically contraindicated, the rationale for the conclusion must be documented in the service recipient's record.
- (2) **Episode Review.** Within twenty-four (24) hours of initiation of the isolation or restraint, there must be a staff review of the episode to ascertain the circumstances requiring the use and how it might be addressed differently. The staff review must include staff involved in the episode and, if possible, staff who were not party to the episode. The Chief Officer of the hospital or designee may, for good cause, allow an exception to the review within twenty-four (24) hours. Under no circumstances may the review be concluded later than five (5) business days following the episode. The review must also address if there are needed changes to the service recipient's treatment plan, opportunities for performance improvements and address any need for alleviation of staff trauma associated with the episode.
- (3) **Systematic Review:** The hospital must develop and implement a process for systematic review of all isolation or restraint episodes and identification of trends of use of either isolation or restraint.

0940-3-6-.18 PERFORMANCE IMPROVEMENT ACTIVITIES. The hospital shall engage in on-going performance improvement activities that focus on the reduction of the use of isolation and restraint. Information obtained through the review processes (service recipient review, episode review, and systematic review) shall be considered in the identification of specific performance improvement activities and in the evaluation of the effectiveness of the performance improvement activities.

0940-3-6-.19 TRAINING The hospital must identify specific staff, based on their job responsibilities, who are involved in the use of isolation or restraint and must assure that they are adequately trained and are competent in the following areas:

- (1) Medical/physical and psychological risk factors associated with the use of isolation and restraint,

- (2) Prevention of and early intervention for assaultive, self-injurious behavior,
- (3) Specific techniques approved by the hospital for the safe and appropriate application and removal of isolation and restraint, including physical holding,
- (4) Use of specific devices, materials, and/or equipment approved by the hospital for use as mechanical restraints,
- (5) Procedures to address problems associated with the use of restraints,
- (6) Hospital policies and procedures regarding isolation and restraint that are in compliance with this chapter,
- (7) Needs and behaviors of the population served,
- (8) Legal issues, and
- (9) Applicable state and federal law and regulations.

The hospital must identify specific staff that must be trained before assuming direct care responsibilities. All other identified staff must be trained within six (6) weeks of initial employment. The hospital must provide annual refresher training on all of the above training elements.

0940-3-6-20 REPORTING Each hospital that uses isolation or restraint must annually report information specified by TDMHDD to the Commissioner of TDMHDD. TDMHDD shall establish reporting guidelines and deadlines necessary to assure uniform reporting of minimum aggregated isolation and restraint data by each hospital.

Any hospital using isolation or restraint must notify the Commissioner of TDMHDD of any death that occurs while a service recipient is restrained or isolated, or where it is reasonable to assume that a service recipient's death is attributable to, or results from, restraint or isolation. The hospital must report such deaths by the next business day following the service recipient's death.

Authority: *T.C.A. §§4-4-103, 4-5-202 and 204; and 33-1-302 and 305, and 33-3-120.*

This notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of February, 2002. (02-16)

**THE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940
DIVISION OF MENTAL HEALTH SERVICES**

There will be a hearing before the Tennessee Department of Mental Health and Developmental Disabilities to consider promulgation of an amendment to rules to be made pursuant to Tenn. Code Ann. § 4-4-103 and §§ 33-2-404 and 406(h). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., § 4-5-204, and will take place in the Cumberland Room of the Cordell Hull Building at 9:30 a.m. on March 21, 2002.

Written comments will be considered if received by close of business, March 15, 2002, at the DMHDD Office of Legal Counsel, Twenty-Sixth Floor, W. R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to the scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Joe Swinford, 5th Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243. Mr. Swinford's telephone number is (615) 532-6700; the department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

For a copy of the entire text of this notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Twenty-sixth Floor, W. R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6516.

SUBSTANCE OF PROPOSED AMENDMENT

Rule 0940-5-2-.04 Application Fees is amended by deleting it in its entirety and substituting instead the following:

0940-5-2-.04 APPLICATION FEES

The applicant must submit a fee or fees for the processing of the application by the Department's Office of Licensure in making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fee or fees. All fees submitted are non refundable. The fee rate is based on the number of distinct categories of services and or facilities (as defined under Chapter 0940-5-1 Definitions, amended under Chapter 947, Public Acts of 2000, codified at Tenn. Code Ann. § 33-2-402, effective March 1, 2001) to be operated at each non-residential site, and on the number of client beds to be licensed at each residential site. A fee must be submitted for each facility at each site for which licensure is being sought under the following schedule:

(1) Non-Residential Services¹ and/or Facility Fees:

| | |
|--|-----------|
| One (1) Distinct Category of Services or Facility | \$ 810.00 |
| Two (2) Distinct Categories of Services and/or Facilities | 1,010.00 |
| Three (3) Distinct Categories of Services and/or Facilities | 1,220.00 |
| Four (4) Distinct Categories of Services and/or Facilities | 1,420.00 |
| More than four (4) Distinct Categories of Services and/or Facilities | 1,620.00 |

(2) Residential Facility Fees:

| | |
|--|-------------------|
| Two to Three (2-3) Beds | \$ 200.00 |
| Four to Ten (4-10) Beds | 280.00 |
| Eleven to Fifteen (11-15) Beds | 410.00 |
| Sixteen to Fifty (16-50) Beds | 810.00 |
| More than Fifty (50) Beds | 1,220.00 |
| | |
| (3) Mental Health Hospitals and Developmental Disabilities Institutional Facilities | \$ 175.00 per bed |

Authority: T.C.A.. §§ 4-4-103, and Tenn. Code Ann. § 33-2-404 & 406(h)

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 28th day of February, 2002.
(02-26)

BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Board of Osteopathic Examination to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-104, 3-9-107, and 63-9-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson 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 2nd day of May, 2002.

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 RULES

AMENDMENTS

Rule 1050-2-.02 Fees, is amended by deleting subparagraphs (1) (a), (1) (b), and (1) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (b), and (1) (d) shall read:

- | | | | |
|-----|-----|---|-----------|
| (1) | (a) | Application Fee – A non refundable fee to be paid by all licensure applicants, except Special Training License applicants, regardless of the type of license applied for. It must be paid each time an application for licensure is filed or an application to take the Board examination is filed. | \$ 400.00 |
| (1) | (b) | Licensure Renewal Fee - To be paid biennially by all licensees. This fee also applies to licensees who reactivate a retired license. | \$ 275.00 |
| (1) | (d) | Late Licensure Renewal Fee - To be paid when a licensee fails to timely renew a licensure. | \$ 200.00 |

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-9-104, and 63-9-107.

Rule 1050-3-.06 Fees, is amended by deleting the introductory language in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (4), so that as amended, the new introductory language and the new paragraphs (1), (2), and (4) shall read:

1050-3-.06 FEES. The following fees are nonrefundable and apply to all applicants and certificate holders. 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 of Health Related Boards. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Osteopathic Examination.

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|-----|--|-----------------------|-----------|
| (1) | Application and Certification Fee - To be paid by all applicants at the time an application is filed for each level or area of certification sought. | | |
| | | Limited Certification | \$ 100.00 |
| | | Full Certification | \$ 50.00 |
| (2) | Biennial Certification Renewal Fee - To be paid by all persons holding certification in any radiological area. | | |
| | | Limited Certification | \$ 50.00 |
| | | Full Certification | \$ 50.00 |
| (4) | Late Certification Renewal Fee - To be paid when a certificate holder fails to timely renew a certification. | | \$ 100.00 |

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-19)

BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Board of Osteopathic Examination to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 53-11-301, 63-9-101, and 63-9-111. 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 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 2nd day of May, 2002.

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

AMENDMENT

Rule 1050-2-.13 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting part (6) (b) 4. in its entirety substituting instead the following language, and is further amended by adding the following new language as part (6) (b) 5. and new paragraph (9), so that as amended, the new parts (6) (b) 4. and (6) (b) 5., and the new paragraph (9) shall read as follows:

- (6) (b) 4. For established patients who, based on sound medical practices, the physician feels does not require a new physical examination before issuing new prescriptions; or
- (6) (b) 5. In compliance with paragraph (9) of this rule.
- (9) Treatment of Chlamydia trachomatis
 - (a) Purpose – This rule provides an acceptable deviation from the normal standard of care in the treatment of Chlamydia trachomatis (hereafter Ct) and provides a means for physicians to help reduce Tennessee's rate of Ct infection which currently exceeds the national rate by over ten percent (10%), and which, if left untreated, can cause serious health problems including pelvic inflammatory disease, ectopic pregnancies, infertility, cervical cancer and an increased risk of HIV infection. This rule will allow physicians and those over whom they exercise responsibility and control to provide an effective and safe treatment to the partners of patients infected with Ct who for various reasons either may not otherwise receive appropriate treatment.
 - (b) For purpose of this rule "partner(s)" shall mean any person who comes into sexual contact with the infected patient during the sixty (60) days prior to the onset of patient's symptoms or positive diagnostic test results.
 - (c) Prerequisites – Physicians and those who provide medical services under their responsibility and control who have first documented all of the following in the medical records for patients may provide partner treatment pursuant to subparagraph (d) of this rule:

1. A laboratory-confirmed Ct infection without evidence of co-infection with gonorrhea or other complications suggestive of a relationship to Ct infection; and
 2. Provision of treatment of the patient for Ct; and
 3. An attempt to persuade the infected patient to have all partners evaluated and treated and the patient indicated that partners would not comply; and
 4. Provision of a copy of reproducible, department-provided Ct educational fact sheet or substantially similar Ct-related literature available from other professional sources to the patient with copies for all partners; and
 5. Counseling the patient on sexual abstinence until seven (7) days after treatment and until seven (7) days after partners have been treated; and
- (d) Partner Treatment - Upon documentation in the patient's medical records of all prerequisites in subparagraph (c) physicians or those who provide medical services under their responsibility and control may either:
1. Provide to the treated patient non-named signed prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of unnamed "partners" as defined in subparagraph (b) and indicated by the patient.
 2. Provide to the treated patient signed, name-specific prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of known partners as defined in subparagraph (b) and named by the patient.

Authority: *T.C.A. §§4-5-202, 4-5-204, 53-11-301, 63-9-101, and 63-9-111.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-20)

BOARD OF REGISTRATION IN PODIATRY - 1155

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 5th Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 1st day of August, 2002.

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 Floor, Cordell Hull Bldg., 425 5th Ave. N., 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 RULE

AMENDMENT

Rule 1155-2-.06, Fees, is amended by deleting subparagraph (1) (d) in its entirety and renumber the remaining subparagraphs accordingly, and is further amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

| | |
|---------------------------------|----------|
| (4) Fee Schedule: | Amount |
| (a) Academic License | \$440.00 |
| (b) Application | \$440.00 |
| (c) Renewal (biennial) | \$450.00 |
| (d) Late Renewal | \$150.00 |
| (e) Replacement License | \$ 25.00 |
| (f) State Regulatory (biennial) | \$ 10.00 |

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, 63-3-109, 63-3-115, and 63-3-116.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of February, 2002. (02-18)

**THE DEPARTMENT OF TRANSPORTATION - 1680
RIGHT-OF-WAY DIVISION, UTILITIES SECTION**

The Tennessee Department of Transportation will hold a public hearing to receive comments concerning the promulgation of amendments to Chapter 1680-6-1, Rules and Regulations for Accommodating Utilities Within Highway Rights-of-Way, with respect to the installation of fiber optic cable facilities on freeways as authorized under Chapter 949 of the Public Acts of 2000, Tenn. Code Ann. § 54-16-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-201, et seq., and will take place in Main Conference Room on the 7th Floor of the James K. Polk Building located at 505 Deaderick Street, Nashville, Tennessee 37243 at 9:00 a.m. CDT on Thursday, April 18, 2002.

Written comments will be considered if received by the close of business (4:30 p.m.) on April 18, 2002, in the Office of General Counsel, Tennessee Department of Transportation, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (April 18, 2002) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Coordinator at Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: John H. Reinbold, Tennessee Department of Transportation, Office of General Counsel, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332, telephone number (615) 741-2941.

SUBSTANCE OF PROPOSED AMENDMENTS

**CHAPTER 1680-6-1
RULES AND REGULATIONS FOR ACCOMMODATING UTILITIES
WITHIN HIGHWAY RIGHTS-OF-WAY**

Rule 1680-6-1-.09 (Appendices) is amended by deleting Appendix 3 and 3A.

Authority: T.C.A. §4-3-2303(2).

Rule 1680-6-1-.09 (Appendices) is amended by renumbering the existing Rule in the Table of Contents and in the body of the Chapter as 1680-6-1-.10 and inserting a new Rule 1680-6-1-.09 in the Table of Contents and the body of the Chapter that shall read:

1680-6-1-.09 FIBER OPTIC CABLE FACILITIES ON FREEWAYS.

- (1) Statement of Policy.
 - (a) Notwithstanding any other rule or provision of Chapter 1680-6-1 to the contrary, it shall be the policy of the Department of Transportation to grant non-exclusive permits, on a competitively neutral and non-discriminatory basis, allowing the longitudinal installation of underground fiber optic cable lines and related facilities within the rights-of-way of freeways on the state highway system and/or federal interstate highway system, as provided in Section 54-16-112 of the Tennessee Code, and subject to this Rule. The installation of fiber optic cable facilities and other utilities that cross over or under freeways shall continue to be regulated in accordance with other provisions of this Chapter.

- (b) The Department of Transportation shall receive compensation for the use of freeway rights-of-way to install fiber optic cable facilities in accordance with the rate of compensation established by the Advisory Board under Section 54-16-112 of the Tennessee Code. The Department of Transportation may, at its option, accept monetary compensation or in-kind compensation, or both. Valuation of in-kind compensation shall be calculated in accordance with the method of valuation adopted by the Advisory Board.
- (2) Governing Law.
- (a) This Rule is promulgated under the authority of, and in compliance with, Section 54-16-112 of the Tennessee Code.
 - (b) It is the intent of the Department of Transportation that this Rule shall be construed and administered in accordance with applicable provisions of the Federal Communications Act of 1934, 47 U.S.C. § 151, et seq.
 - (c) The location and installation of fiber optic cable facilities on state freeway rights-of-way shall be governed by this Rule and, where applicable, by other provisions of this Chapter and the rules and regulations of the Federal Highway Administration with respect to the accommodation of utilities, 23 C.F.R. Part 645, Subpart B, as amended.
 - (d) To the extent that the specific provisions of this Rule conflict with other provisions of Chapter 1680-6-1, the specific provisions of this Rule shall govern.
- (2) Definitions.
- (a) “Advisory Board” means the advisory board established under Section 54-16-112 of the Tennessee Code with the authority to establish the rate of compensation, and a method for the valuation of in-kind compensation, for the use of state freeway rights-of-way to install underground fiber optic cable lines and related facilities.
 - (b) “Clear Zone” when used in reference to the use of state freeway rights-of-way under this Rule means the roadside border area from the edge of the traveled way outward to a distance of not less than 30 feet.
 - (c) “Conduit” means a hollow tube or duct (of varying sizes) used to enclose innerducts for the underground installation of fiber optic cable.
 - (d) “Innerduct” means a hollow, flexible tube (of varying sizes) used to enclose fiber optic cables for underground installation, and which may be enclosed within conduit.
 - (e) “Longitudinal” means an installation that is parallel or nearly parallel to the alignment of the highway.
 - (f) “Rural” when used in reference to the use of state freeway rights-of-way under this Rule means the right-of-way along any segment of a freeway that is not otherwise defined as “urban” or “suburban” under this Rule.
 - (g) “State freeway” means all freeways within the State of Tennessee designated either as a state highway by the Department of Transportation or as a federal interstate highway.
 - (h) “Suburban” when used in reference to the use of state freeway rights-of-way under this Rule means any of the following, unless the segment of freeway right-of-way is otherwise defined as “urban” under this Rule:

1. The right-of-way along any segment of state freeway within 10 miles outside the urban area boundary of a city having a population of 100,000 or more according to the most recent federal census; and/or
 2. The right-of-way along any segment of state freeway within the urban area boundary of any city having a population of 20,000 or more according to the most recent federal census; provided, that where one side of the freeway is within the urban area boundary of such a city, the right-of-way along both sides of the freeway shall be considered suburban; and/or
 3. The right-of-way along any state freeway that serves as a beltway around any part of a city having a population of 100,000 or more according to the most recent federal census where any part of such freeway is within 10 miles outside the urban area boundary of such city, including without limitation State Route 385 in Shelby County.
- (i) “Telecommunications company” means any public agency (not including any agency of the State of Tennessee), or any cooperative, corporation, partnership or individual named in the Use and Occupancy Agreement that may locate, install or maintain fiber optic cable facilities within the rights-of-way of state freeways.
 - (j) “Term” means the duration of the Use and Occupancy Agreement under which a telecommunications company locates, installs and maintains fiber optic cable facilities within the rights-of-way of state freeways.
 - (k) “Urban” when used in reference to the use of state freeway rights-of-way under this Rule means the right-of-way along any segment of a freeway within the urban area boundary of a city having a population of 100,000 or more according to the most recent federal census; provided, that where one side of the freeway is within the urban area of such a city, the right-of-way along both sides of the freeway shall be considered urban.
 - (l) “Urban area boundary” for the purposes of this Rule means the boundary of the urbanized area of a city having a population of 20,000 or more according to the most recent federal census. These urban area boundaries are established by the Department of Transportation and the city in cooperation with one another, and subject to the approval of the United States Secretary of Transportation, in accordance with 23 U.S.C. § 101.
- (2) Use and Occupancy Agreement Requirements.
 - (a) No telecommunications company shall be permitted to install underground fiber optic cable lines or related facilities within state freeway rights-of-way without first executing a Use and Occupancy Agreement.
 - (b) Upon making application to the Department of Transportation for a Use and Occupancy Agreement under this Rule, the telecommunications company shall pay an application fee to the Department of Transportation for processing the application, reviewing plans, and other administrative services, but not including inspection services, which shall be separately charged as provided in Rule 1680-6-1-.04(10). The total amount of the required application fee shall include a base fee of \$200 plus \$10 for each mile of the proposed installation within state freeway rights-of-way.
 - (c) Each Use and Occupancy Agreement for the longitudinal installation of fiber optic cable facilities within state freeway rights-of-way shall be subject to this Rule and specifically, but without limitation, to the following terms and conditions:

1. Right to Cross.

The Department of Transportation reserves a perpetual right at any time to cross the underground fiber optic cable lines and related facilities for any purpose related to the construction, reconstruction, operation or maintenance of the highway as determined by the Department.

2. Assignment.

The telecommunications company may not assign or transfer its rights or obligations under the Use and Occupancy Agreement to another telecommunications company or other entity or person without first giving written notice to, and obtaining the consent of, the Department of Transportation, which consent shall not be unreasonably withheld.

3. Indemnification and Hold Harmless.

(i) The telecommunications company shall indemnify the State of Tennessee and the Department of Transportation, and their officers, employees and agents, and hold them harmless for any and all claims arising from the telecommunications company's use of the freeway right-of-way to install, operate and/or maintain fiber optic cable facilities, including claims by third parties, and including attorneys' fees and all other costs of preparing for and defending against such claims.

(ii) Without limiting the foregoing, the telecommunications company shall hold the State of Tennessee and Department of Transportation, and their officers, employees and agents, harmless for any personal injury or property damage, including interruption of service or loss of business, incurred by the telecommunications company, or its officers, employees or agents, arising from the Department of Transportation's construction, reconstruction, operation or maintenance of the freeway or freeway right-of-way, regardless of any negligence or fault of the State of Tennessee or Department of Transportation.

4. Insurance.

The telecommunications company shall at all times have and maintain, and upon the request of the Department of Transportation shall provide written proof of, liability insurance policies containing, at a minimum, the following insurance coverage:

(i) Commercial general liability insurance, in form and substance acceptable to the Department of Transportation.

(ii) Commercial automobile liability insurance, in form and substance acceptable to the Department of Transportation, for all vehicles owned or used by the telecommunications company in any phase of the construction, installation, operation, maintenance or repair of its fiber optic cable facilities within the freeway right-of-way.

(iii) All such liability insurance policies shall provide liability coverage sufficient, at a minimum, to match the State's limits of liability under Section 9-8-307 of the Tennessee Code. These limits are currently set at \$300,000 per claimant and \$1,000,000 per occurrence, but they are subject to change without amendment of this Rule.

- (iv) All such liability insurance policies shall name the State of Tennessee and Department of Transportation each as an additional insured for the purposes of fulfilling the telecommunications company's obligations under the Use and Occupancy Agreement, including without limitation any and all obligations to indemnify and hold harmless the State of Tennessee and Department of Transportation, and their officers, employees and agents.

5. Surety Bond.

The telecommunications company shall furnish a surety bond, issued by a company licensed to do business in the State of Tennessee, and in such form and amount acceptable to the Department of Transportation, guaranteeing full and faithful performance of the terms and conditions of the Use and Occupancy Agreement, including without limitation the repair and restoration of the right-of-way premises and the completion of any installation of fiber optic facilities to be provided to the Department of Transportation as compensation under the Use and Occupancy Agreement.

6. Relocation or Removal.

- (i) If, at any time, the Department of Transportation determines that any fiber optic cable facilities need to be relocated within, or removed from, the state freeway right-of-way for any reason related to the use, operation, maintenance, construction or reconstruction of the freeway, the telecommunications company shall relocate or remove the facilities as directed by written notice from the Department of Transportation.
- (ii) All such costs of relocation or removal, including the cost of relocating any part of the fiber optic cable facilities reserved to the Department of Transportation under the Use and Occupancy Agreement, shall be borne by the telecommunications company and not by the Department, except as the Department may otherwise agree in accordance with a special condition of the Use and Occupancy Agreement executed prior to the installation, or as the Department may subsequently agree in writing under a utility relocation contract.
- (iii) The telecommunications company shall complete the relocation or removal within such time as the Department of Transportation shall specify by written notice, or within such additional time as the Department of Transportation may authorize in writing. Upon the failure of the telecommunications company to relocate or remove the fiber optic cable facilities within the specified time, or such additional time as the Department may authorize in writing, the fiber optic cable facilities shall be deemed to be abandoned by the telecommunications company, and the Department of Transportation shall be deemed the owner thereof; provided, however, that the Department of Transportation, in its sole discretion, may refuse ownership of the abandoned fiber optic cable facilities at any time within one year after the abandonment and thereupon hold the telecommunications company liable for the costs of removing such facilities from the state freeway right-of-way.
- (iv) To the extent that the telecommunications company is required to remove fiber optic cable facilities from the state freeway right-of-way, the telecommunications company shall to that extent be relieved of any further obligation under the Use and Occupancy Agreement to compensate the Department for the use of the state freeway right-of-way. To the extent that the telecommunications company is allowed to relocate fiber optic cable facilities to another location within the freeway right-of-way, the telecommunications company may elect either to remain under the terms of compensation specified in the Use and Occupancy Agreement, or the telecommunications company may choose to enter into a new Use and Occupancy Agreement for the new location.

(5) Duration and Renewal of Use and Occupancy Agreements.

(a) Term Options.

The Use and Occupancy Agreement for the longitudinal installation of fiber optic facilities within state freeway rights-of-way shall have an initial term of 10 years, 20 years, 30 years, or 40 years, at the option of the telecommunications company.

(b) Renewal Options.

Upon the expiration of the initial term of the Use and Occupancy Agreement, the telecommunications company shall have an option to renew the Use and Occupancy Agreement for a term of 10 years, 20 years, or 30 years, subject to the applicable rate of compensation established by the Advisory Board as of the date of renewal; provided that the initial term and any successive renewal terms shall not exceed a combined total of 40 years.

(6) Compensation.

(a) Compensation Requirement.

1. No telecommunications company shall be permitted to install underground fiber optic cable lines or related facilities longitudinally within state freeway rights-of-way except upon the payment of compensation for the use of such rights-of-way, as provided in Section 54-16-112 of the Tennessee Code.
2. The Department of Transportation, at its option, may receive the compensation for use of state freeway rights-of-way in the form of money or as in-kind compensation in the form of telecommunications facilities or services, or both.

(b) Rate and Method of Compensation.

1. The rate of compensation and the method of valuation for in-kind compensation shall be as established by the Advisory Board. As established by the Advisory Board, the rate of compensation varies according to the type of state freeway right-of-way (urban, suburban or rural) in which the fiber optic cable facilities are located, and a surcharge shall be added to the applicable rate of compensation where the fiber optic cable facilities are located within the clear zone.
2. The current rate structure and method of valuation for in-kind compensation are set forth in the Rate Sheet reproduced in the Appendix to this Rule at Paragraph (12). This Rate Sheet may be amended by the Advisory Board, as provided in Section 54-16-112 of the Tennessee Code, without amendment of this Rule.

(c) Total Amount of Compensation.

The total amount of compensation due for use of the right-of-way shall be fixed as of the date of execution of the Use and Occupancy Agreement, in accordance with the rate and method of valuation of in-kind compensation established by the Advisory Board at that time, and in accordance with the type of right-of-way, the method of remittance and the term of the Use and Occupancy Agreement selected by the telecommunications company.

(d) Unit Measure of Compensation.

1. There shall be a separate charge for each innerduct containing fiber optic cable that a telecommunications company installs in the right-of-way or for each fiber optic cable buried in the right-of-way without an innerduct.
2. The minimum charge for each such innerduct or cable shall be based on the rate of compensation established by the Advisory Board for a one and one-quarter inch (1¼") innerduct.
3. The charge for larger innerduct or cable shall be calculated on a pro rata basis. For example, the charge for a two and one-half inch (2½") innerduct shall be twice the charge for a one and one-quarter inch (1¼") innerduct.

(e) Empty Innerduct.

1. There shall be no charge for empty innerduct or conduit installed vertically within the same trench line along the state freeway right-of-way in accordance with a Use and Occupancy Agreement; provided, however, that each separate trench line shall require a Use and Occupancy Agreement and shall be subject to a minimum charge based on the rate of compensation for a one and one-quarter inch (1¼") innerduct.
2. The installation of fiber optic cable in an empty innerduct or conduit shall not be permitted except upon the execution of a new Use and Occupancy Agreement. Compensation for the installation of fiber optic cable in such empty innerduct or conduit shall be fixed on the date of execution of the new Use and Occupancy Agreement, in accordance with the applicable rate and method of valuation for in-kind compensation established by the Advisory Board at that time.

(f) In-Kind Compensation.

If the Department of Transportation chooses to receive in-kind compensation under a Use and Occupancy Agreement, it shall provide the telecommunications company with a list of the specific telecommunications facilities and/or services that it wishes to obtain. The value of such in-kind compensation, as determined in accordance with the method of valuation established by the Advisory Board, shall be subtracted from the total amount of monetary compensation due for use of the right-of-way and the remaining balance, if any, shall be remitted as monetary compensation.

(7) General Installation Policies.

(a) Timing of Installations.

To minimize interference with the safe use, operation and maintenance of the freeway, and as reasonably necessary to manage the right-of-way, the Department of Transportation may limit the timing of access so that, to the extent possible, there is no more than one fiber optic cable installation project underway at any given time on any particular segment of a state freeway.

(b) Minimum Installation.

In order to preserve the availability and efficient use of freeway rights-of-way, and as reasonably necessary to manage such rights-of-way, the Department of Transportation, as a general rule, will not permit fiber optic cable installations of less than a total length of twenty-five (25) miles along any state freeway or combination of state freeways. Exceptions may be considered on a case-by-case basis.

(8) Location and Alignment Criteria.

(a) General Location Policy.

To minimize interference with the safe use, operation and maintenance of the freeway, longitudinal installations of fiber optic cable facilities shall be located outside the clear zone and as near to the outer edge of the right-of-way line as is reasonably practical; provided, however, that alternative locations within the right-of-way, including the clear zone, may be permitted where the Department of Transportation determines that it is not reasonably practical to locate the fiber optic cable facility along the outer edge of the right-of-way and that the use of the alternative location is consistent with the Department's goal to minimize interference with the safe use, operation and maintenance of the freeway.

(b) Horizontal Clearance.

As a general rule, subsequent installations of underground fiber optic cable facilities outside the clear zone shall be located not less than five feet (5') from any previously installed underground fiber optic cable line or other utility installation, if any, within the freeway right-of-way. Exceptions may be considered on a case-by-case basis and as may be reasonably necessary to manage the state freeway right-of-way.

(c) Depth.

All underground fiber optic cable lines shall be located and installed in accordance with the minimum depths established in Paragraph 1680-6-1-.06(2) of this Chapter, as amended, or at such greater depths as the Department of Transportation may require as a special condition of the Use and Occupancy Agreement.

(d) Access Points.

Devices for accessing underground fiber optic cable facilities for routine service or site visits shall not be allowed within the clear zone of the freeway, except as the Department of Transportation may otherwise expressly permit or require.

(e) Support Facilities.

All above-ground support facilities for underground fiber optic cable lines shall be located outside the clear zone and as near to the outer edge of the right-of-way line as is reasonably practical. No above-ground facility may be located on the freeway right-of-way without the express written approval of the Department of Transportation, and preference will be given to locations at interchanges, rest areas and welcome centers, weigh stations, and highway crossings.

(f) Attachment to Freeway Structures.

The attachment of fiber optic cable facilities to freeway structures - including without limitation bridges, overpasses, underpasses, culverts and tunnels - shall be permitted only with the prior written approval of the Director of the Structures Division, in accordance with Rule 1680-6-1-.05.

(g) Service Connections.

Service connections to adjacent properties shall not be permitted from fiber optic cable installations within the access control limits of the freeway right-of-way, except at interchanges or other locations approved in writing by the Department of Transportation.

(9) Clear Zone Considerations.

(a) General Clear Zone Location Policy.

The installation of fiber optic cable facilities may be permitted within the clear zone of a state freeway under special circumstances where the Department of Transportation determines that it is not reasonably practical to locate the fiber optic cable facility outside the clear zone and that the installation of fiber optic cable facilities within the clear zone may be done in a manner that is consistent with the Department's goal to minimize interference with the safe use, operation and maintenance of the freeway.

(b) Limitation of Installations Within the Clear Zone.

In order to minimize interference with the safe use, operation and maintenance of the freeway, and as reasonably necessary to manage the right-of-way, the Department of Transportation reserves the right to restrict the total number of installations within the clear zone to no more than one installation on any particular segment of a state freeway.

(c) Clear Zone Installation Terms and Conditions.

A telecommunications company requesting permission for the longitudinal installation of fiber optic cable facilities within the clear zone of a state freeway may be required to comply with the following terms and conditions, without limitation as to such additional terms and conditions as may be included in the Use and Occupancy Agreement:

1. The telecommunications company may be required to provide other telecommunications companies with reasonable notice of the anticipated or planned opening of the right-of-way within the clear zone.
 - (i) The notice period should provide such time as another telecommunications company may reasonably require to develop business plans and obtain financing in order to participate in the installation of fiber optic cable facilities during the anticipated or planned opening of the right-of-way within the clear zone, and in any event the notice period should not be less than 60 days.
 - (ii) The required notice may be accomplished through the publication of a notice of the proposed project, including the anticipated construction schedule, for three consecutive days in a newspaper of general circulation within the area of the project, and by the mailing of such notice to all incumbent local exchange carriers (ILECs) within the area of the project, to all facilities-based competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) certified by the Tennessee Regulatory Authority, and to such other potentially interested parties as the Department of Transportation may direct.
2. The telecommunications company may be required to install spare fiber cable lines, empty innerducts, and/or empty conduit sufficient to accommodate reasonably anticipated future demand.
3. For each section of fiber, empty innerduct or empty conduit within the clear zone, the telecommunications company may be required to install connection points (manhole or cabinets) outside the clear zone, or elsewhere as the Department of Transportation may direct, where other telecommunications companies may, at their option, access or interconnect with these facilities.
4. The rates, terms and conditions for interconnection with facilities and/or the use of empty innerduct or conduit space within the clear zone should be fair, reasonable and non-discriminatory, but may include a reasonable profit, in accordance with applicable regulations and guidelines of the Federal Communications Commission and/or Tennessee Regulatory Authority.

5. The telecommunications company may be required to make fiber available for sale to other telecommunications companies on an “irrevocable right to use” basis at such rates and upon such terms and conditions as are fair, reasonable and non-discriminatory, but which may include a reasonable profit, in accordance with applicable regulations and guidelines of the Federal Communications Commission and/or Tennessee Regulatory Authority.
6. The telecommunications company may be required to offer facilities and services for resale at such rates and upon such terms and conditions as are fair, reasonable and non-discriminatory, but which may include a reasonable profit, in accordance with applicable regulations and guidelines of the Federal Communications Commission and/or Tennessee Regulatory Authority.
7. If the telecommunications company provides retail telecommunications service, either directly or through an affiliated entity, it may be required to provide such services at such rates, terms and conditions as are fair, reasonable and non-discriminatory, in accordance with applicable regulations and guidelines of the Federal Communications Commission and/or Tennessee Regulatory Authority.

(10) Installation and Maintenance Requirements.

(a) General Standards of Care.

1. The telecommunications company shall take care not to install any fiber optic cable facility in such a manner or location as to create a potential hazard to life, health or property or in such a manner as to impair the use, operation and maintenance, or the future expansion or reconstruction, of the freeway.
2. The telecommunications company shall take care to install all fiber optic cable facilities in such manner as to require only minimal maintenance after installation.

(b) Tennessee One-Call Service.

The telecommunications company shall comply with the Tennessee One-Call Service as provided in Section 65-31-107 of the Tennessee Code, or as it may be amended.

(c) Permits and Approvals.

The telecommunications company shall be responsible for obtaining all approvals and/or permits that may be required for activities authorized under this Rule, including without limitation all environmental permits and federal regulatory approvals or permits, if applicable.

(d) Minimum Installation and Maintenance Controls.

The following minimum controls shall apply to the installation, servicing and maintenance of all fiber optic cable facilities within state freeway rights-of-way, in addition to such other requirements as the Department of Transportation may provide as a general or special condition of the Use and Occupancy Agreement:

1. Installation and Maintenance Plan.

Before commencing any installation, servicing or maintenance of a fiber optic cable facility, the telecommunications company shall submit an installation and maintenance plan to the Department of Transportation for approval, and such plan shall be made a part of the Use and Occupancy Agreement. At a minimum, the installation and maintenance plan shall specify:

- (i) The location and method of installing each part of the fiber optic cable facility within the right-of-way;
- (ii) The means by which access to and within the right-of-way shall be accomplished for the purpose of installing, servicing and maintaining each part of the fiber optic cable facility, including provisions for ingress and egress, parking of vehicles and equipment, and storage of materials;
- (iii) The means by which the telecommunications company will provide for the control of traffic on the freeway, if needed, in the course of installing, servicing or maintaining any part of the fiber optic cable facility;
- (iv) The schedule for completing the installation of the fiber optic cable facility, or parts thereof, within the right-of-way; and
- (v) The procedure by which the telecommunications company will conduct emergency maintenance operations within the right-of-way.

2. Preservation of Pavement Structure.

Open cutting or trenching of the freeway's pavement structure, including without limitation the traveled way, shoulders and access ramps, shall not be permitted. Wherever the Department of Transportation permits a crossing of the freeway pavement structure in accordance with this Rule, the crossing shall be accomplished by boring or other untrenched method as approved by the Department.

3. Blasting.

When blasting is necessary, the telecommunications company shall follow the guidelines established in Rule 1680-6-1-.07.

4. Access to Right-of-Way for Installation and Maintenance.

- (i) As far as it is reasonably practical, all fiber optic cable facilities should be designed and located in such a manner that they can be installed, serviced and maintained without direct access thereto from the traveled way, access ramps or shoulders of the freeway. Such direct access may be permitted in special circumstances where there is no reasonably practical alternative means of access and the telecommunications company has made adequate provisions for controlling access to the work zone, directing traffic, and protecting the safety of workers and the traveling public, as specified in the installation and maintenance plan approved by the Department of Transportation.
- (ii) Except as may be permitted under special circumstances as described above, access to the freeway right-of-way for the installation, servicing or maintenance of fiber optic cable facilities shall be limited to:
 - (I) Frontage roads, where available;
 - (II) Adjacent or nearby public roads and streets;
 - (III) Trails along or near the freeway right-of-way line that connect only to an intersecting road; or

(IV) Adjacent private property behind the access control fence.

- (iii) In every case where the Department of Transportation has permitted a temporary break in the access control fence under this Part, the telecommunications company shall have the responsibility to maintain control of access to the state freeway right-of-way as specified in the installation and maintenance plan approved by the Department.

5. Parking of Vehicles.

The telecommunications company shall not be permitted to park vehicles and equipment or to store materials on the freeway right-of-way without express prior approval by the Department of Transportation. In no case shall the telecommunications company be permitted to park vehicles and equipment or store materials within the clear zone of the freeway, except as may be required during actual installation operations within the clear zone and while all required traffic control is present and in place.

6. Traffic Control.

- (i) All traffic control signs and devices which the telecommunications company may use in the course of any installation, servicing or maintenance of a fiber optic cable facility shall comply with the provisions of Chapter 1680-6-1 and the Manual on Uniform Traffic Control Devices.
- (ii) In addition, the telecommunications company shall arrange for law enforcement officers having appropriate enforcement authority to be present to ensure the safe flow of traffic whenever any installation, servicing or maintenance of a fiber optic cable facility occurs within the clear zone of the freeway or as may be required in the installation and maintenance plan approved by the Department of Transportation where access to the work zone has been permitted from the traveled way, shoulders or access ramps of the freeway. The telecommunications company may not conduct any such work within the right-of-way without giving specific advance notice thereof to the Department of Transportation.

7. Advance Notice of Installation or Maintenance Work.

Before performing any non-emergency servicing or maintenance of a fiber optic cable facility at any location within the freeway right-of-way and before performing any installation of a fiber optic cable facility within the clear zone or where access to the utility work zone has been permitted from the traveled way, shoulders or access ramps of the freeway, the telecommunications company shall give at least five (5) work days advance notice thereof to the Regional Director of the Department of Transportation Region in which the work is to be performed.

8. Emergency Maintenance or Repair.

The telecommunications company shall notify the appropriate Regional Director of the Department of Transportation as soon as possible, and in any event not more than twenty-four (24) hours, after the occurrence of an event requiring emergency maintenance or repair of a fiber optic cable facility within the freeway right-of-way, or as otherwise specified in the installation and maintenance plan approved by the Department.

(e) Cessation of Work for Public Safety.

If the telecommunications company fails to comply with the traffic control plan or any other provision of the installation and maintenance plan, or if any activity of the telecommunications company within the

freeway right-of-way interferes with the safe and efficient use of the freeway as determined by the Department of Transportation, the telecommunications company shall immediately cease such activity upon notice being given by the Department, and the telecommunications company shall thereafter work with the Department to bring its activities into compliance with the installation and maintenance plan and/or implement such additional safety requirements as may be specified by the Department.

(f) Ecological, Historical and Archaeological Considerations.

If at any time during the installation of fiber optic cable facilities within the freeway right-of-way the telecommunications company encounters an area having ecological, historical or archaeological significance under federal or state law, the telecommunications company shall immediately notify the Department of Transportation and cease installation operations in that area until receiving further instructions from the Department of Transportation.

(g) Trees.

The cutting or removal of trees along the freeway right-of-way shall not be permitted without the express approval of the Department of Transportation.

(h) Hazardous Substances.

The telecommunications company shall not place, install or deposit any hazardous substance or hazardous waste within or on any part of the state freeway or state freeway right-of-way. If at any time the telecommunications company causes or allows a spill of a hazardous waste or substance within the freeway right-of-way, the telecommunications company shall remain solely liable for the clean-up and removal of such hazardous waste or substance. The telecommunications company shall indemnify the State of Tennessee and Department of Transportation, and their officers, employees and agents, and shall hold them harmless against any and all claims or expenses of any kind related to the deposit, spillage and/or clean-up of any such hazardous wastes or substances.

(i) Installation of Access Points for the Department of Transportation.

Where the Department of Transportation requests in-kind compensation for the use of state freeway rights-of-way in accordance with Section 54-16-112 of the Tennessee Code and this Rule, the telecommunications company shall provide pull boxes, splice boxes and/or other access points at such intervals and locations as the Department of Transportation may require. Covers for such access points shall be traffic rated in accordance with the requirements of the Department of Transportation's Standard Specifications for Road and Bridge Construction, and each cover shall be marked to identify it as a fiber optic cable facility.

(j) Inspection.

All work performed within state freeway right-of-way or otherwise on state property, including without limitation any work performed for the Department of Transportation, shall be subject to inspection by the Department. The Department shall have the authority to reject substandard work or materials and/or to suspend or stop work, in whole or part, where the telecommunications company fails to comply with any requirement of this Rule or the Use and Occupancy Agreement, or where any unsafe or hazardous condition exists.

(k) Above-Ground Markers.

The telecommunications company shall install permanent above-ground markers indicating the location of its underground fiber optic cable facilities at such intervals as the Department of Transportation may approve or require in the installation and maintenance plan. These markers shall not interfere with the safe use, operation and maintenance of the freeway, nor shall they constitute a hazard to the traveling public.

(l) Repair and Restoration of Premises.

1. The telecommunications company shall, as directed by and in a manner satisfactory to the Department of Transportation, promptly replace or repair any portion of the pavement, shoulders, structures, ramps, guardrail, drainage, or any other part of the freeway that may have been damaged in the course of any work within the state freeway right-of-way.
2. Upon the completion of any installation, replacement, repair or relocation of fiber optic cable facilities within the state freeway rights-of-way, the telecommunications company shall promptly restore the premises to a condition similar to that which existed prior to such work, in a manner satisfactory to the Department of Transportation.
3. The telecommunications company shall remain responsible for maintaining any excavation or trench on or along the state freeway right-of-way, as directed by and in a manner satisfactory to the Department of Transportation.

(m) As-Built Drawings.

“As-built” drawings of all underground and aboveground fiber optic cable facilities located on the state freeway right-of-way shall be submitted to the Department of Transportation upon completion of any installation or relocation.

(11) Compliance and Revocation.

- (a) In the event that the Department of Transportation determines that the telecommunications company is in violation of any provision of this Rule or the Use and Occupancy Agreement, the Department of Transportation may order the telecommunications company to comply.
- (b) In any case not presenting any imminent threat to public safety, as determined by the Department of Transportation, the telecommunications company shall be given thirty (30) days, or such other reasonable time as the Department may provide, within which to correct the noncompliance.
- (c) In any case presenting an imminent threat to public safety, as determined by the Department of Transportation, the telecommunications company shall correct the noncompliance promptly as directed by the Department.
- (d) If the telecommunications company fails to comply with any order or directive given by the Department of Transportation under this Paragraph, the Department of Transportation may revoke the Use and Occupancy Agreement, after such notice and opportunity for hearing, if any, as may be required by law.
- (e) The telecommunications company shall not be entitled to any compensation or reimbursement of expenses in the event of such revocation of the Use and Occupancy Agreement.
- (f) Upon the revocation of the Use an Occupancy Agreement, the telecommunications company shall promptly remove any fiber optic cable facilities within the state freeway right-of-way, in such manner and within

such time as the Department of Transportation may direct. If the telecommunications company fails to remove the fiber optic cable facilities within the time directed, the fiber optic cable facilities shall be deemed to be abandoned by the telecommunications company, and the Department of Transportation shall be deemed the owner thereof; provided, however, that the Department of Transportation, in its sole discretion, may refuse ownership of the abandoned fiber optic cable facilities at any time within one year after the abandonment and thereupon hold the telecommunications company liable for the costs of removing such facilities from the freeway right-of-way.

(12) Appendix: Rate Sheet Adopted by the Advisory Board.

RATE SHEET

**UNDERGROUND FIBER OPTIC FACILITIES
ADVISORY BOARD**

The Advisory Board hereby adopts the following fair, reasonable and nondiscriminatory rate of compensation for access to controlled-access highway right-of-way, and method of valuation of in-kind compensation in accordance with Section 54-16-112 of the Tennessee Code:

Minimum Underlying Urban/Suburban/Rural Rates

| Type of Right-of-Way | Annual Per Mile Rate |
|----------------------|--|
| Urban | \$1,500 per 1 ¼ inch innerduct (or equivalent) |
| Suburban | \$1,000 per 1 ¼ inch innerduct (or equivalent) |
| Rural | \$500 per 1 ¼ inch innerduct (or equivalent) |

Minimum Underlying Clear Zone Rate

| Type of Right-of-Way | Annual Per Mile Surcharge |
|----------------------|---------------------------|
| All Areas | \$4,000, per trench |

The Advisory Board hereby adopts the following rates, developed from the above underlying rates, plus a 3% inflation factor for the annual remittance option, or for the up-front remittance options, based on a 5% rate of discount.

**Up-front versus Annual Remittance Options
Per 1 ¼ inch innerduct (or equivalent), per mile**

| Type of Right-of-Way | Annual | Up-front for 10 year term | Up-front for 20 year term | Up-front for 30 year term | Up-front for 40 year term |
|-------------------------|---|---------------------------|---------------------------|---------------------------|---------------------------|
| Urban | \$1,500 + 3% inflation factor compounded (starting yr. two) | \$12,162 | \$19,628 | \$24,212 | \$27,026 |
| Suburban | \$1,000 + 3% inflation factor compounded (starting yr. two) | \$8,108 | \$13,085 | \$16,141 | \$18,017 |
| Rural | \$500 + 3% inflation factor compounded (starting yr. two) | \$4,054 | \$6,543 | \$8,071 | \$9,009 |
| Clear Zone (per trench) | \$4,000 + 3% inflation factor compounded (starting yr. two) | \$32,431 | \$52,341 | \$64,564 | \$72,068 |

The Advisory Board hereby adopts an annual increase of the per mile rates listed above by the actual percentage rate of inflation as measured by the Consumer Price Index (CPI). This factor will be applied to all contracts seeking access to the controlled-access highway right-of-way after 2002, and every year thereafter, until the Advisory Board establishes a new rate of compensation.

The Advisory Board hereby adopts the incremental cost valuation methodology, as described in the Summary Report submitted by the Department of Transportation, dated November 30, 2001, for the valuation of in-kind compensation.

This Rate Sheet is hereby ADOPTED, in its entirety, by majority vote of the Advisory Board members present and entitled to vote.

Justin Wilson, Chairman of the Advisory Board

Dated: January 7, 2002

Authority: T.C.A. § 54-16-112.

Paragraph (6) of Rule 1680-6-1-.04 is amended by deleting the current language in its entirety and substituting the following language so that as amended the Paragraph shall read:

- (6) Except as may otherwise be provided in Rule 1680-6-1-.09 for certain fiber optic cable facilities, the design, location and installation of new utility facilities or the necessary relocation and/or adjustment of existing utility facilities within the rights-of-way of freeways shall conform to the provisions of "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," published by the American Association of State Highway and Transportation Officials in 1982. This publication is included herein as Appendix # 2.

Authority: T.C.A. § 4-3-2303(2).

Paragraph (7) of Rule 1680-6-1-.04 is amended by deleting the current language in its entirety and substituting the following language so that as amended the Paragraph shall read:

- (7) Longitudinal installations of utility facilities other than certain fiber optic cable facilities governed by Rule 1680-6-1-.09 shall not be permitted within freeway rights-of-way except in special cases under strictly controlled conditions and only along the outer edge of the right-of-way. This restriction shall not apply to utilities that provide services to Department of Transportation or other state-operated facilities along the freeway, including without limitation rest areas, welcome centers and weigh stations.
 - (a) To be considered for a permit in a special case, the utility owner must submit to the Department of Transportation a study showing that:
 1. The proposed utility accommodation will not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway;
 2. The proposed utility accommodation will not be constructed, serviced or maintained by direct access from the traveled way, shoulders or access ramps of the freeway;
 3. The proposed utility accommodation will not interfere with or impair the present operation, use and maintenance, or future expansion, of the freeway; and

4. Any alternative location would be contrary to the public interest. This showing shall include an evaluation of the direct and indirect environmental and economic effects that would result if the proposed utility accommodation is denied.
- (b) When evaluating this study, the Department of Transportation will give consideration to:
1. The effect the proposed utility accommodation would have on the highway and traffic safety;
 2. The direct and indirect environmental and economic effects of any loss of productive agricultural land that would result if the proposed utility accommodation is denied;
 3. The interference with or impairment of the use of the highway if the proposed utility accommodation is approved; and
 4. The availability of alternative locations for the utility.

Authority: T.C.A. §4-3-2303(2).

Paragraph (8) of Rule 1680-6-1-.04 is amended by deleting the current language in its entirety and substituting the following language so that as amended the Paragraph shall read:

- (8) Use and Occupancy Agreements for the installation of utility facilities within the rights-of-way of Federal-aid highway projects may require the approval of the Division Administrator, Federal Highway Administration, as provided in the rules and regulations of the Federal Highway Administration with respect to the accommodation of utilities, 23 C.F.R. Part 645, Subpart B, as amended.

Authority: T.C.A. § 4-3-2303(2).

Paragraph (12) of Rule 1680-6-1-.07 is amended by adding a new Subparagraph (c) that shall read:

- (c) Notwithstanding any other provision of this Paragraph, the surety bond or bonds required for the installation of certain fiber optic cable facilities on freeway rights-of-way, as provided in Rule 1680-6-1-.09, shall be submitted to the Right-of-Way Division, Utilities Section, of the Department of Transportation in such form and under such terms as may be specified by the Department in the Use and Occupancy Agreement.

Authority: T.C.A. §4-3-2303(2).

Rule 1680-6-1-.08 is amended by adding a new Paragraph (9) that shall read:

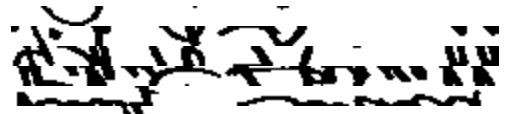
- (9) Notwithstanding any other provision of this Rule, when an applicant proposes to install fiber optic cable facilities on freeway rights-of-way as provided in Rule 1680-6-1-.09, the application for a Use and Occupancy Agreement shall be submitted to the Right-of-Way Division, Utilities Section, of the Department of Transportation for consideration and approval. The application shall be accompanied by an installation and maintenance plan prepared in accordance with Rule 1680-6-1-.09. Provisions for inspection of the installation and the release of any surety bonds, when appropriate, shall be determined by the Department of Transportation in accordance with the Use and Occupancy Agreement.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2002. (02-31)



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 February 1, 2002 and ending February 28, 2002.



RILEY C. DARNELL
Secretary of State

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