

TAAAR



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RILEY C. DARNELL
Secretary of State

Division of Publications
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PREFACE

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

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

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

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

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

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

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

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

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

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ANNOUNCEMENTS

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 December 2002 is 9.12 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 5.12 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 October 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. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-01	Oct 2, 2002	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendments	<i>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy</i> 1050-2-.01 Definitions 1050-2-.02 Fees <i>Chapter 1050-3</i> 1050-2-.05 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure Examinations 1050-2-.06 Examinations 1050-2-.07 Licensure Renewal 1050-2-.09 Officers, Consultants, Records, and Declaratory Orders 1050-2-.10 Licensure Discipline and Civil Penalties 1050-2-.12 Continuing Education 1050-2-.13 Scope of Practice <i>Requirements General Rules and Regulations Governing Utilization of X-Ray Operators in Osteopathic Physicians' Offices</i> 1050-3-.01 Definitions 1050-3-.09 Renewal	Robert J. Kraemer, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Dec 16, 2002
10-02	Oct 3, 2002	0940 Mental Health and Developmental Disabilities Division of Mental Health Services	Rulemaking Hearing Rules	Repeal	0940--3-4-.01 Definition of Qualified Mental Health Professional) Out Patient Services	Marthagem Whitlock Mental Health Services Division Mental Health and Developmental Disabilities 425 5th Ave N 3rd Fl, Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Dec 17, 2002
10-03	Oct 3, 2002	0940 Mental Health and Developmental Disabilities Division of Mental Health Services	Rulemaking Hearing Rules	Repeal	<i>Chapter 0940-3-6 Hospital Isolation and Restraint</i> 0940-3-6-.01 Scope 0940-3-6-.02 Definitions 0940-3-6-.03 Purpose of Isolation or Restraint 0940-3-6-.04 Application of This Chapter 0940-3-6-.05 Policies and Procedures 0940-3-6-.06 Initiation of Isolation or Physical	Marthagem Whitlock Mental Health and Developmental Disabilities 425 5th Ave N 3rd Fl, Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Dec 17, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-03, cont.					Restraint in the Absence of a Licensed Independent Practitioner 0940-3-6-.07 Authorization 0940-3-6-.08 Length of Authorization 0940-3-6-.09 Renewal 0940-3-6-.10 Assessments 0940-3-6-.11 Behavioral Criteria for Release 0940-3-6-.12 Monitoring and Assessment of Continued Need 0940-3-6-.13 Location of Use 0940-3-6-.14 Termination 0940-3-6-.15 Notification of Legal Surrogates 0940-3-6-.16 Notification of Other Family Member or Significant Other 0940-3-6-.17 Internal Review 0940-3-6-.18 Performance Improvement Activities 0940-3-6-.19 Training 0940-3-6-.20 Reporting		
10-04	Oct 3, 2002	0940 Mental Health and Developmental Disabilities Division of Mental Health Services	Rulemaking Hearing Rules	New Chapter	<i>Chapter 0940-3-7 Severe Impairment</i> 0940-3-7-.01 Purpose 0940-3-7-.02 Definitions 0940-3-7-.03 Process for Designation to Provide Services to Persons with Severe Impairment 0940-3-7-.04 Review and Approval 0940-3-7-.05 Renewal and Maintaining 0940-3-7-.06 Termination	Marthagem Whitlock Mental Health Services Division Mental Health and Developmental Disabilities 425 5th Ave N 3rd Fl, Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Dec 17, 2002
10-05	Oct 3, 2002	0940 Mental Health and Developmental Disabilities Office of Licensure	Rulemaking Hearing Rules	Amendments	<i>Chapter 0940-5-2 Licensure Fees</i> 0940-5-2-.04 Application Fees	Marthagem Whitlock Mental Health Services Division Mental Health and Developmental Disabilities 425 5th Ave N 3rd Fl, Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Dec 17, 2002
10-06	Oct 4, 2002	0800 Medical Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-2 General Rules and Regulations Governing the Practice of Medicine</i>	Robert J. Kraemer General Counsel 26th Fl TN Twr	Dec 18, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-06, cont.					0880-2-.14 Specifically Regulated Areas and Aspects of Medical Practice 0880-5-.05 Educational Course, Approval and Curriculum for Limited Certification <i>Chapter 0880-5</i> <i>General Rules and Regulations Governing the Utilization of X-Ray Operators in Physician's Offices</i> 0880-5-.06 Examinations for Certification	312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	
10-07	Oct 9, 2002	1200 Health Bureau of Health Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-11-3</i> <i>Children's Special Services</i> 1200-11-3-.01 Statement of Purpose 1200-11-3-.02 Definitions 1200-11-3-.03 Eligibility Requirements 1200-11-3-.04 Covered Services 1200-11-3-.05 Authorization and Reimbursement for Services	Richard Russell TN Twr, 26 th Fl 312 8 th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 23, 2002
10-09	Oct 15, 2002	1200 Health Board for Licensing Health Care Facilities Division of Health Care Facilities	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-8-5</i> <i>Behavioral Health Units in Nursing Facilities</i> 1200-8-5-.01 Special Services	John W. Dalton OGC Health 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-532-7179	Dec 29, 2002
10-11	Oct 15, 2002	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules		<i>Chapter 1200-8-30</i> <i>Standards for Pediatric Emergency Care Facilities</i> 1200-8-30-.01 Definitions 1200-8-30-.03 Administration 1200-8-30-.05 Basic Functions	Peggy DePriest OGC Health 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-741-1611	Dec 29, 2002
10-12	Oct 15, 2002	1200 Health Health Licensure and Regulation Emergency Medical Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-12-1</i> <i>General Rules</i> 1200-12-1-.21 Destination Determination	Earl W. Roberts 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 532-7181	Dec 29, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-16	Oct 16, 2002	1660 Wildlife Resources Commission	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels</i> 1660 -2-7-.34 Dale Hollow Lake	Sherly Holtam TWRA POB 40747 Nashville TN 37204 615-781-6606	Dec 30, 2002
10-18	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN East TN State University	Proposed Rules	Amendments	<i>Chapter 0240-3-2 Student Disciplinary Rules</i> 0240-3-2-.04 Disciplinary Sanctions 0240-3-2-.05 Disciplinary Procedures 0240-3-2-.06 Traffic and Parking Regulations <i>Chapter 0240-4-2 Student Housing Rules</i> 0240-4-2-.02 Residence Hall conduct and Disciplinary Sanctions 0240-4-2-.04 Visitation and Lifestyle Options 0240-4-2-.07 Special Regulations Applicable to Buccaneer Village (Married Student Housing) 0240-4-2-.08 Miscellaneous	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002
10-19	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN TN Technological University	Proposed Rules	Amendments	<i>Chapter 0240-3-6 Student Disciplinary Rules</i> 0240-3-6-.08 Registration of Motor Vehicles <i>Chapter 0240-4-6 Student Housing Rules</i> 0240-4-6-.07 Miscellaneous	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002
10-20	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN Columbia State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-9 Student Disciplinary Rules</i> 0240-3-9-.02 Disciplinary Offenses	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-21	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN Motlow State Community College	Proposed Rules	Amendments	Chapter 0240-3-12 Student Disciplinary Rules 0240-3-12-.06 Vehicle Registration and Parking	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002
10-22	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN Nashville State Technical Institute	Proposed Rules	Amendments	<i>Chapter 0240-3-17 Student Disciplinary Rules</i> 0240-3-17-.06 Traffic and Parking Regulations	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002
10-23	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN Pellissippi State Technical Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-18 Student Disciplinary Rules</i> 0240-3-18-.06 Traffic and Parking Regulations 0240-3-18-.08 Registration of Vehicles	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002
10-24	Oct 17, 2002	0240 TN Board of Regents State University and Community College System of TN Northeast State Technical Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-20 Student Disciplinary Rules</i> 0240-3-20-.05 Disciplinary Procedures 0240-3-20-.06 Traffic and Parking Regulations	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	Feb 28, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-25	Oct 18, 2002	0880 Medical Examiners Advisory Committee for Acupuncture	Rulemaking Hearing Rules	New Rules	<i>Chapter 0880-12</i> <i>General Rules and Regulations Governing the Practice of Acupuncturists</i> 0880-12-.01 Definitions 0880-12-.02 Scope of Practice 0880-12-.03 Reserved 0880-12-.04 Acupuncture Certification Process 0880-12-.05 ADS Limited Certification Process 0880-12-.06 Fees 0880-12-.07 Application Review, Approval, and Denial 0880-12-.08 Reserved 0880-12-.09 Certification Renewal 0880-12-.10 Supervision 0880-12-.11 Retirement and Reactivation of Certification 0880-12-.12 Reserved 0880-12-.13 Professional Ethics 0880-12-.14 Reserved 0880-12-.15 Disciplinary Actions, and Civil Penalties 0880-12-.16 Replacement Certificates 0880-12-.17 Change of Name and/or Address 0880-12-.18 Reserved 0880-12-.19 Committee Officers, Consultants, Records, and Declaratory Orders 0880-12-.20 Advertising	Robert J. Kraemer, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615 741-1611	Jan 1, 2003
10-26	Oct 22, 2002	1200 Health Bureau of Health Licensure and Regulation	Emergency Rules	New Rules	<i>Chapter 1200-12-2</i> <i>Procedures for Administering Chemical Agent Antidotes in Emergency Situations</i> 1200-12-2-.01 Introduction 1200-12-2-.02 Exposure 1200-12-2-.03 Procedures 1200-12-2-.04 Reports 1200-12-2-.05 Notification	Earl W. Roberts Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-532-7181	Oct 22, 2002 through April 5, 2003
10-27	Oct 22, 2002	1340 Safety Division of Driver License Issuance	Proposed Rules	Amendment	<i>Chapter 1340-1-13</i> <i>Classified and Commercial Driver Licenses</i> 1340-1-13-.06 Photo Identification Licenses 1340-1-13-.18 Contents and Design of Licenses	Wanda Adams Department of Safety 1150 Foster Avenue Nashville, TN 37249 615.251.5310	Jan 5, 2003

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-28	Oct 22, 2002	0780 Commerce and Insurance Division of Regulatory Boards Burial Services Section	Rulemaking Hearing Rules	Repeals New rules	<i>Chapter 0780-1-48</i> <i>Preneed Funeral Service Contracts</i> <i>Chapter 0780-5-6</i> <i>Cemetery Advisory Board</i> <i>Chapter 0780-5-9</i> <i>Cemeteries</i> 0780-5-9-.01 Applicability 0780-5-9-.02 Definitions 0780-5-9-.03 Consumer Price Index Adjustment for Installation of Commodities Fee 0780-5-9-.04 Consumer Price Index Adjustment for Memorial Care Fee 0780-5-9-.05 Bureau of Labor Statistics CPI- U Annual Averages 0780-5-9-.06 Memorial Care Required 0780-5-9-.07 Sign Required at Cemetery 0780-5-9-.08 Registration, Renewal, and Reinstatement 0780-5-9-.09 Change of Ownership 0780-5-9-.10 Examinations and Audits 0780-5-9-.11 Granting of Exemption for Community Cemeteries 0780-5-9-.12 Request for Exemption for Community Cemeteries 0780-5-9-.13 Notice of Changes to Exempt Community Cemetery Information 0780-5-9-.14 Access to Books, Records, and Papers of Exempt Community Cemeteries 0780-5-9-.15 Improvement Care Trust Fund of Exempt Community Cemeteries; Deposits 0780-5-9-.16 Revocation of Exemption 0780-5-9-.17 Civil Penalties	Cecil H. Ross Staff Attorney Commerce and Insurance 25 th Fl TN Twr 312 8 th Ave N Nashville, TN 37243- 0569 615-741-3072	Jan 5, 2003
10-30	Oct 23, 2002	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendment	1050-2-.13 Specifically Regulated Areas and Aspects of Medical Practice	Robert J. Kraemer, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247 615 741-1611	Jan 6, 2003

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-31	Oct 24, 2002	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	Chapter 0260-2 General Rules Governing Chiropractic Physicians 0260-2-.02 Scope of Practice	Robert J. Kraemer, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615 741-1611	Jan 7, 2003
10-32	Oct 24, 2002	0780 Commerce and Insurance Division of Insurance and Division of TennCare Oversight	Rulemaking Hearing Rules	Amendments	<i>Chapter 0780-1-73 Uniform Claims Process for TennCare Participating Managed Care Organizations</i> 0780-1-73-.03 Definitions 0780-1-73-.04	Robert E. Moore Commerce And Insurance 25 th Fl TN Twr 312 8 th Ave. N Nashville, TN 37243 615-741-2199	Jan 7, 2003
10-33	Oct 25, 2002	1360 State Business Services Division	Proposed rule	Amendment	Chapter 1360-8 Uniform Commercial Code	Bob Grunow Sec of State TN Twr 6th Fl, 312 8th Ave N Nashville, TN 37243 615-741-0584	Feb 28, 2003
10-34	Oct 28, 2002	0540 Electrolysis Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0540-1 General Rules Governing Electrology, Electrologists, and Electrology Instructors</i> 0540-1-.01 Definitions 0540-1-.06 Fees 0540-1-.09 Renewal of License 0540-1-.11 Retirement and Reactivating of License 0540-1-.12 Continuing Education 0540-1-.15 Disciplinary Actions and Civil Penalties Chapter <i>0540-3 General Rules Governing Schools of Electrology</i> 0540-3-.01 Definitions 0540-3-.09 Renewal of License 0540-3-.15 Disciplinary Actions and Civil Penalties	Carrie Archie Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	Jan 11, 2003

ANNOUNCEMENTS

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-35	Oct 28, 2002	0020 Accountancy	Public Necessity Rules	Amendments	<i>Chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements</i> 0020-1-.06 Examinations	Connaught O'Connor OGC TN Twr 25th Fl 312 8th Ave N Nashville, TN 37243 615-741-3072	Oct 28, 2002 through April 11, 2003
10-36	Oct 28, 2002	1370 Communications Disorders and Sciences' Council for Licensing Hearing Instrument Specialists	Rulemaking Hearing Rules	Amendments	<i>Chapter 1370-2 General Rules Governing Hearing Instrument Specialists</i> 1370-2-.01 Definitions 1370-2-.09 Renewal of License 1370-2-.12 Continuing Education	Carrie Archie Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 11, 2003
10-37	Oct 28, 2002	0080 Agriculture Division of Regulatory Services	Proposed Rules	Amendments	<i>Chapter 0080-6-14 Pest Control Operators</i> 0080-6-14-.04 License Categories <i>Chapter 0080-6-16 Regulations Governing the Use of Restricted Use Pesticides</i> 0080-6-16-.03 Certification Requirements 0080-6-16-.04 Recertification Requirements	Patricia Clark General Counsel Department of Agriculture P.O. Box 40627 Nashville, TN 37204 615-837-5093	Feb 28, 2003
10-46	Oct 30, 2002	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<i>Chapter 0450-1 General Rules Governing Professional Counselors</i> 0450-1-.01 Definitions 0450-1-.05 Procedures for Licensure 0450-1-.10 Supervision, Post-Masters	Harry Weddle OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 13, 2003
10-47	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.05 State Curriculum, Requirement D	Karen Weeks Education 9th Fl Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 615-532-3528	Feb 28, 2003

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-48	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement E	Karen Weeks State Board of Education 9 th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243- 1050 615-532-3528	Feb 28, 2003
10-49	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement E	Karen Weeks State Board of Education 9 th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243- 1050 615-532-3528	Feb 28, 2003
10-50	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-2-1 Evaluations</i> 0520-2-1-.02 Local Evaluations	Karen Weeks State Board of Education 9 th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243- 1050 615-532-3528	Feb 28, 2003
10-51	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.03 Interim License and Permit	Karen Weeks State Board of Education 9 th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243- 1050 615-532-3528	Feb 28, 2003

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-52	Oct 31, 2002	0520 Education	Proposed Rules	Amendment	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.05 The Praxis Series	Karen Weeks State Board of Education 9th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243- 1050 615-532-3528	Feb 28, 2003
10-53	Oct 31, 2002	1680 Transportation Right-of-Way Division	Rulemaking Hearing Rules	Repeal and new chapter	<i>Chapter 1680-2-4 Relocation Assistance Program</i> 1680-2-4-.01 Purpose 1680-2-4-.02 Applicability 1680-2-4-.03 Definitions 1680-2-4-.04 Administration -- General 1680-2-4-.05 Relocation Plan 1680-2-4-.06 Relocation Notices 1680-2-4-.07 Relocation Assistance Advisory Services 1680-2-4-.08 Aliens Not Lawfully Present in the United States 1680-2-4-.09 Relocation Payments Generally 1680-2-4-.10 Moving Payments - Residential 1680-2-4-.11 Moving Payments - Non- Residential 1680-2-4-.12 Ineligible Moving Expenses 1680-2-4-.13 Replacement Housing Payments 1680-2-4-.14 Mobile Homes 1680-2-4-.15 Last Resort Housing 1680-2-4-.16 Appeals	John H. Reinbold Transportation Suite 700 James K. Polk Bldg 505 Deaderick St Nashville, TN 37243- 0332 (615) 741-2941	Jan 14, 2003

HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720**NOTICE OF BEGINNING OF REVIEW CYCLE**

Applications will be heard at the December 11, 2002 Health Services and Development Agency 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 the review cycle effective October 1, 2002. The review cycle includes a 60-day period of review by the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. Upon written request by interested parties the staff of The Health Services and Development Agency shall conduct a public hearing. *Certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a review less than 60 days including a 30-day period of review by the Department of Health or 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 68-11-1609(g)(1) effective May 2002, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Health Services and Development Agency and serve a copy on the contact person no later than fifteen (15) days before the agency meeting at which the application is originally scheduled.

For more information concerning each application you may contact the Health Services and Development Agency (615/741-2364).

NAME AND ADDRESS	DESCRIPTION
Cumberland Research & Treatment Center, L.L.C. 511 Royal Parkway Nashville (Davidson Co.), TN 37210 James D. Causey – (901)—526-0206 CN0208-081	The initiation of methadone treatment and the establishment of a non-residential methadone treatment facility to be located at 511 Royal Parkway in Nashville, Tennessee. \$ 234,000.00
Wellmont Hancock County Hospital Highway 33 Main Street Sneedville (Hancock Co.), TN 37869 Troy Clark – (423)—230-8209 CN0209-083	The construction of a ten (10) bed hospital in Hancock County at Highway 33 Main Street in Sneedville, Tennessee. The ten (10) beds will be licensed as medical/surgical and swing beds. \$ 8,625,479.60
Vanco Manor, Inc. 813 South Dickerson Road Goodlettsville (Davidson Co.), TN 37072 Donald B. Ross – (615)—377-9191 CN0209-084	The addition of twenty-four (24) skilled "Medicare/Medicaid" nursing home beds to an existing nursing home at 813 South Dickerson Road, in Goodlettsville, Tennessee. If approved, the facility would contain ninety (90) licensed nursing home beds. \$ 917,325.00

NAME AND ADDRESS	DESCRIPTION
Independence, Inc. 119 South Main Street, Suite 500 Memphis (Shelby Co.), TN 38103 Corhonda D. Bolton – (901)—312-5600 CN0209-085	The establishment of a home care organization and the initiation of home health services in the counties of Shelby, Tipton, Fayette, Haywood, Hardeman, McNairy, Lauderdale, Dyer, Crockett, and Gibson. The parent office will be located at 119 South Main Street, Suite 150 in Memphis (Shelby County), Tennessee. \$ 19,000.00
Holston Medical Group Outpatient Diagnostic Center Exit 52, I-181 @ Meadowview Parkway, NE Quadrant Kingsport (Sullivan Co.), TN 37660 John Wellborn – (615)—665-2022 CN0209-089	The establishment of an outpatient diagnostic center (ODC), and the acquisition of a magnetic resonance imaging (MRI) scanner as well as computed tomography (CT), ultrasound, mammography, nuclear medicine, x-ray, and bone densitometry imaging equipment. The ODC will be located near the intersection of I-181 and Meadowview Parkway in Kingsport, Tennessee. The MRI service was previously approved (CN9909-076) for 2323 North John B. Dennis Highway in Kingsport and was unimplemented. \$ 5,129,552.00
Riverside Hospital, L.L.C. 802 Youngs Lane Nashville (Davidson Co.), TN 37207-4828 Michael E. Hampton – (615)—578-1199 CN0209-091	The initiation of psychiatric services and the establishment of a freestanding twenty (20) bed psychiatric hospital geriatric unit to be located at 802 Youngs Lane in Nashville, Tennessee. This hospital is to be licensed by the Tennessee Department of Mental Health and Developmental Disabilities. \$ 1,900,000.00
+The Manchester Diagnostic Center 1615 McMinnville Highway Manchester (Coffee Co.), TN 37355 William H. West – (615)—259-1450 CN0209-092	The establishment of an outpatient diagnostic center (ODC), the initiation of mobile magnetic resonance imaging (MRI) services two days per week, and the acquisition of computed tomography (CT) and other diagnostic equipment. The ODC will be located at 1615 McMinnville Highway in Manchester, Tennessee. \$ 4,062,950.00
Plaza Radiology, LLC d/b/a Chattanooga Imaging 1710 Gunbarrel Road Chattanooga (Hamilton Co.), TN 37421 William H. West – (615)—259-2450 CN0209-093	The initiation of positron emission tomography (PET) imaging services and the acquisition of a PET Scanner to be located at 1710 Gunbarrel Road in Chattanooga, Tennessee. \$ 2,460,499.00
+Coffee Medical Center 1001 McArthur Street Manchester (Coffee Co.), TN 37355E. Graham Baker – (615)—383-3332 CN0209-094	The initiation of magnetic resonance imaging (MRI) services and the acquisition of a fixed open Siemens Concerto 0.2 Tesla MRI unit to be located in a 672 square foot building attached to Coffee Medical Center at 1001 McArthur Street in Manchester, Tennessee. \$ 1,375,000.00

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency Rules regarding persons licensed as pesticide applicators and creating a new license category, Chapter 0080-6-14 Pest Control Operators and chapter 0080-6-16 Regulations Governing the Use of Restricted Use Pesticides, 10 T.A.R. (October, 2002). Filed September 16, 2002; effective through February 28, 2003. (09-24)
- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency Rules relating to the aerial application of pesticides and the persons licensed as aerial pesticide applicators, Chapter 0080-6-15 Rules and Regulations Governing Commercial Aerial Applicators of Pesticides, 6 T.A.R. (June, 2002). Filed June 28, 2002; effective through December 10, 2002. (06-38)
- 1200 - Department of Health - Board for Licensing Health Care Facilities and 0620 - Department of Finance and administration - Bureau of TennCare - Emergency rules dealing with special care units for ambulatory residents with dementia or Alzheimer's Disease and related disorders, chapters 1200-8-5 Behavioral Health Units in Nursing Facilities and Chapter 1200-13-1 General Rules, 8 T.A.R. (August 2002). Filed July 5, 2002; effective through December 17, 2002. (07-05)
- 1240 - Department of Human Services - Adult and family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-1 Standards for group Day Care Homes, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-30)
- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-28)
- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-4 Standards for Family Day Care Homes, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-29)
- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through November 4, 2002. (08-29)
- 1660 - Wildlife Resources Commission - Boating Division - Emergency rules regarding waterway zoning on Dale Hollow Lake, chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels, 6 T.A.R. (June, 2002). Filed June 6, 2002; effective through November 18, 2002. (06-01)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH LICENSURE AND REGULATION
DIVISION OF EMERGENCY MEDICAL SERVICES**

**CHAPTER 1200-12-2
PROCEDURES FOR ADMINISTERING CHEMICAL AGENT ANTIDOTES IN EMERGENCY SITUATIONS**

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. §4-5-208, the Tennessee Emergency Medical Services Board is promulgating emergency rules covering procedures for administering chemical agent antidotes or epinephrine in emergency situations. The emergency rules are necessary upon the findings of the Tennessee Emergency Medical Services Board that the use of chemical warfare agents by terrorists would represent an emergency situation that is not addressed by current rules. Further, that dangers from such chemical agents pose a potential threat from accidental or intentional misuse, or as a weapon of mass destruction and require the additional authority for emergency responder or emergency medical personnel to administer medical counter-agents or epinephrine by intramuscular injection or autoinjector.

Emergency medical technicians – paramedics may administer such medications under local protocols, but the dangers to the public safety and welfare require that other emergency responders or licensed emergency medical personnel be prepared to administer such antidotes and lifesaving drugs and that such procedures and authorizations should be statewide in scope. Therefore, the Emergency Medical Services Board finds that an immediate danger to the public health, safety, and welfare exists, and that emergency rules authorizing and establishing these procedures are necessary for the public welfare until adoption of these lifesaving procedures by normal rulemaking process.

For copies of the entire text of the proposed rule, contact: Joseph B. Phillips, Director, Division of Emergency Medical Services, Tennessee Department of Health, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-0701, 615-741-2584.

**CHAPTER 1200-12-2
PROCEDURES FOR ADMINISTERING CHEMICAL AGENT
ANTIDOTES IN EMERGENCY SITUATIONS**

TABLE OF CONTENTS

1200-12-2-.01 Introduction	1200-12-2-.04 Reports
1200-12-2-.02 Exposure	1200-12-2-.05 Notification
1200-12-2-.03 Procedures	

1200-12-2-.01 INTRODUCTION.

- (1) During the response to emergency situations such as those precipitated by a terrorist event, emergency responders or persons may encounter patients or suffer self-exposure to toxic chemical agents requiring the immediate administration of antidotes or medications to preserve and sustain life and vital functions. Upon the exposure to a significant risk, this rule authorizes emergency treatment by use of autoinjection or intramuscular injection of such antidotes or medications as shall be approved by the Board or the State Medical Officer.

1200-12-2-.02 DEFINITIONS – WITHIN THE MEANING OF THIS RULE:

- (1) “Emergency responder” – Emergency responder means emergency medical technicians, paramedics, firefighter, emergency medical first response worker, law enforcement and other public safety officials or volunteers making an authorized response or rendering care at the scene of an emergency.
- (2) “Exposure” - Exposure means the presence of an injurious agent in such circumstances that life threatening symptoms may reasonably be anticipated, and that such situations impose an immediate threat to life.

1200-12-2-.03 PROCEDURES.

- (1) EMS personnel or emergency responders may utilize or administer the contents or medications upon the availability of antidote kits or means to administer antidotes or other medications approved for intramuscular injection by the Board or the Commissioner of Health.

1200-12-2-.04 REPORTS.

- (1) Upon the administration of such antidotes or medication by autoinjection or intramuscular injection during an emergency situation, the time and use of such antidotes shall be reported to the appropriate medical personnel assuming care for the patient.

1200-12-2-.05 NOTIFICATION.

- (1) Upon a situation or event involving suspected chemical agents or other toxic substances responding personnel shall immediately notify an emergency dispatch center and inform appropriate public safety and health officials.

Authority: T.C.A. §§4-5-202, 4-5-207, 4-5-208, 68-140-504, 68-140-509, and 68-140-510.

The emergency rules set out herein were properly filed in the Department of State on the 22nd day of October, 2002, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 5th day of April, 2003. (10-26)

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pg. 18

PROPOSED RULES

DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF REGULATORY SERVICES

CHAPTER 0080-6-14 PEST CONTROL OPERATORS

CHAPTER 0080-6-16 REGULATIONS GOVERNING THE USE OF RESTRICTED USE PESTICIDES

Presented herein are proposed amendments of the Tennessee Department of Agriculture, Regulatory Services Division, submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Agriculture to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty-days (30) 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 amendment contact Kathy Booker, Pesticide Administrator, Regulatory Services Division, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5133.

The text of the amendments to the current rules is as follows:

CHAPTER 0080-6-14 PEST CONTROL OPERATORS

TABLE OF CONTENTS

0080-6-14-.04 License Categories

AMENDMENT

Rule 0080-6-14-.04 License Categories is amended by adding the following new paragraph (14) to create the Public Health Pest Control license category.

- (14) Public Health Pest Control – Control and management of all stages of mosquitoes and other pests having medical and public health importance.

Authority: T.C.A. §62-21-118

**CHAPTER 0080-6-16
REGULATIONS GOVERNING THE USE OF
RESTRICTED USE PESTICIDES**

TABLE OF CONTENTS

0080-6-16-.03 Certification Requirements

0080-6-16-.04 Recertification Requirements

AMENDMENTS

Rule 0080-6-16-.03(4)(h) Public Health Pest Control, is amended by deleting the current language of Part 1. in its entirety and substituting in lieu thereof the following language so that as amended the new Part 1. shall read:

1. Description – This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides in public health programs or in the commercial application of pesticides for the management and control of pests having medical and public health importance.

Authority: T.C.A. §§43-8-106 and 62-21-118

Rule 0080-6-16-.04, Recertification Requirements, Paragraph (2), subparagraph (b), part 1. is amended by deleting the period (.) at the end and replacing it with a comma (,) and the word “or”

Rule 0080-6-16-.04, Paragraph (2), subparagraph (b) is further amended by deleting part 3. in its entirety, so that the amended rules shall read:

0080-4-16-.04 RECERTIFICATION REQUIREMENTS

- (1) After original certification expires, to use, apply, supervise, sell or buy restricted use pesticides, or be a certified technician, one must be recertified.
- (2) Requirements for Recertification
 - (a) Private Applicator - Successfully complete an instructional course offered by the University of Tennessee Extension Service within the last two years of the current certification period.
 - (b) Restricted Use Applicator
 1. Acquire a specified number of points during the current certification period. Points will be awarded for attending conferences, programs, seminars, etc., which will present information pertinent to the individual’s certification category. The sponsors of the meetings awarding the recertification points must send a copy of the program to the Tennessee Department of Agriculture, and it must meet guidelines approved by the Department, or
 2. Pass updated written examination. These requirements must be completed with every fifth licensing year.

Authority: T.C.A. §§43-8-106 and 62-21-118 Page 4 of 4 pages

The proposed rules set out herein were properly filed in the Department of State on the 28th day of October, 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 February, 2003. (10-37)

STATE BOARD OF EDUCATION - 0520

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 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 Karen Weeks, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed rule is as follows:

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

AMENDMENT

Paragraph (6) of Rule 0520-1-3-.05 State Curriculum, Requirement D is amended by deleting the phrase “curriculum frameworks” and the phrase “curriculum framework” wherever they appear and substituting instead the phrase “curriculum standards.”

Authority: T.C.A. §49-1-302.

(10-47)

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

AMENDMENT

Part 2 of subparagraph (d) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part and substituting instead the following language so that as amended the part shall read:

2. Gateway examinations. Achieving minimum standards on three gateway examinations in mathematics, English language arts, and science shall constitute one requirement for graduation with a high school diploma and graduation with honors for students who enter the 9th grade in 2001-2002 and thereafter. Students who fail to meet the minimum standard on any gateway examination shall be given the opportunity to be retested during any of the regularly scheduled administrations of the examination. A student shall not be required to be retested on any gateway examination for which the minimum standard was previously achieved.

Subpart (i) of part 2 of subparagraph (d) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the subpart and substituting instead the following language so that as amended the subpart shall read:

- (i) Students must meet minimum standards for the gateway examinations as determined by the State Board of Education in mathematics, English language arts, and science.

Authority: T.C.A. §49-1-302.

(10-48)

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

Part 2 of subparagraph (d) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part and substituting instead the following language so that as amended the part shall read:

2. Gateway examinations. Achieving minimum standards on three gateway examinations in mathematics, English language arts, and science shall constitute one requirement for graduation with a high school diploma and graduation with honors for students who enter the 9th grade in 2001-2002 and thereafter. Students who fail to meet the minimum standard on any gateway examination shall be given the opportunity to be retested during any of the regularly scheduled administrations of the examination. A student shall not be required to be retested on any gateway examination for which the minimum standard was previously achieved.

Subpart (i) of part 2 of subparagraph (d) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the subpart and substituting instead the following language so that as amended the subpart shall read:

- (i) Students must meet minimum standards for the gateway examinations as determined by the State Board of Education in mathematics, English language arts, and science.

Authority: T.C.A. §49-1-302.

(10-49)

**CHAPTER 0520-2-1
EVALUATIONS****AMENDMENT**

Paragraph (2) of Rule 0520-2-1-.02 Local Evaluations is amended by deleting the paragraph and substituting instead the following language so that as amended the paragraph shall read:

- (2) Local evaluation of administrators and supervisors. Implementation of an approved evaluation system developed from these guidelines will meet the requirements for evaluating the following groups of administrators and supervisors: assistant principals, principals, and instructional supervisors (e.g., Title I, vocational, special education, and general instructional supervisors). Differences between the evaluation of a principal or assistant principal and instructional supervisor are noted in each of the main sections of the guidelines.

Subparagraph (a) of paragraph (2) of Rule 0520-2-1-.02 Local Evaluations is amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended the subparagraph shall read:

- (a) Content (Domains of Competence). All principals, assistant principals, and instructional supervisors shall be evaluated using the following domains of competence:
 1. Facilitating the development and implementation of a vision of learning.
 2. Advocating and sustaining a school culture conducive to student learning and professional growth.
 3. Managing the organization for an effective learning environment.
 4. Collaborating with families and community members.
 5. Acting with integrity and fairness and in an ethical manner.
 6. Responding to and influencing the larger political and cultural context.

Authority: T.C.A. §49-1-302.

(10-50)

**CHAPTER 0520-2-4
LICENSURE****AMENDMENT**

Rule 0520-2-4-.03 Interim License and Permit is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0520-2-4-.03 ALTERNATIVE LICENSES, INTERIM LICENSES, AND PERMITS

- (1) Alternative licenses and interim licenses are issued to individuals who meet the following requirements and are valid until the following August 31:

(a) Alternative A License.

1. The applicant must hold at least a bachelor's degree from a regionally accredited institution of higher education in the teaching field.
2. A Tennessee director of schools must state intent to employ the applicant and must provide a mentor teacher for the applicant during the first two years of teaching.
3. An individual may be reissued an alternative A license not more than two times provided that a director of schools states intent to employ. Before the first renewal, the individual must be enrolled in an institution with an approved program of studies. For each renewal, the individual must complete at least 6 semester hours of credit, unless all course requirements have been met.
4. Applicants are eligible for an alternative A license in all teaching areas, except that if they seek licensure or renewal in the endorsement areas of early childhood education, middle grades education, or elementary education they must:
 - (i) Meet the admission standards of an approved teacher preparation program.
 - (ii) Make satisfactory progress in the program, including meeting any deficiencies in content area(s).
 - (iii) Be employed in a Tennessee school.
5. An individual may present two years of successful teaching under an alternative A license in lieu of student teaching.

(b) Interim B License.

1. An interim B license shall be issued if the applicant meets all requirements as determined by the State Board of Education.
2. A Tennessee director of schools must state intent to employ the applicant.
3. An individual may be reissued an interim B license one time provided that a director of schools states intent to employ and a second time if the director verifies that the individual meets the criteria stated in TCA 49-5-5605.
4. A fully licensed teacher from a state other than Tennessee who did not hold a teaching license in another state prior to July 1, 1984, and who meets all requirements except testing requirements, shall be issued an interim B license for one year. At the end of the first year of employment, upon successful completion of the test requirements, local evaluation, other minimum requirements, and the recommendation of the local education agency, the applicant may apply for the appropriate license based on allowable teaching experience.

(c) Alternative C License.

1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education in the teaching field or related field.
 2. The applicant must have successfully completed the pre-service portion of an alternative preparation program approved by the State Board of Education.
 3. A Tennessee director of schools must state intent to employ the applicant and to provide the requisite support of one or more teacher mentors during the first year of teaching.
 4. Applicants are eligible to participate in programs for alternative preparation for licensure using the alternative C license in all areas.
 5. Successful completion of the teaching experience by the teacher will count as one apprentice year, or two apprentice years in the case of early childhood education, middle grades education, or special education if the preparation program and teaching span two years.
 6. The alternative C license may be reissued one time if the teacher has not completed all of the requirements within one year, and two times in the case of early childhood education, elementary education, middle grades education, or special education.
- (d) Interim D License for Interns.
1. The applicant must have been granted a bachelor's degree from a regionally accredited institution of higher education and must be admitted to an approved teacher education program that includes an internship.
 2. The applicant must be recommended for the license by an institution of higher education with an approved teacher education program that includes an internship.
 3. Successful completion of the internship will count as the first apprentice year of teaching.
 4. The interim D license for Interns may be reissued two times; an intern may teach using the license for the equivalent of no more than one school year.
- (e) Alternative E License. Alternative licensure for individuals who do not complete programs.
1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The candidate must meet the content requirements for the desired area of endorsement by one of the following: (a) completion of an academic major in the desired area of endorsement, (b) determination by an institution of higher education that the person has met the knowledge and skills required for the desired area of endorsement, or (c) successful completion of the required specialty examination.
 2. A Tennessee director of schools must state intent to employ the applicant and must provide a mentor teacher for the applicant during the first two years of teaching.
 3. The applicant who has not completed professional education, must complete the professional education component of an approved teacher education institution, not to exceed 24 semester hours. The institution will verify completion of the required knowledge and skills through a combination of course work and field experiences and will verify that the applicant has completed the testing requirements in basic skills established by the State Board of Education.

4. An individual may be reissued an alternative E license not more than two times provided that a director of schools states intent to employ. Before the first renewal, the individual must be enrolled in an institution with an approved program of studies. For each renewal, the individual must complete at least 6 semester hours of credit, unless all course work requirements have been met.
 5. Applicants are eligible for an alternative E license in all areas except early childhood education, middle grades education, and elementary education.
 6. In lieu of student teaching, an individual may present a positive recommendation from the employing school system verifying two years of successful teaching.
- (f) Alternative A, Alternative C, and Alternative E Licenses for Pre-Kindergarten Teachers.
1. The applicant who seeks employment in a state approved pre-kindergarten program or a program receiving a state early childhood education grant may be issued an alternative A license, alternative C license, or alternative E license endorsed in PreK-4.
 2. The director of schools or the director of the program receiving a state early childhood education grant must state intent to employ the applicant in a pre-kindergarten program and fulfill all other obligations under the alternative A license, alternative C license, or alternative E license.
- (2) Permit.
- (a) The state may issue a permit when a school system meets the following requirements:
 1. A director of schools must state intent to employ and indicate the position to be held by the applicant.
 2. The school system must indicate that it is unable to obtain the services of a licensed teacher for the type and kind of school in which a vacancy exists.
 3. The school system must have posted the position, advertised in appropriate media; and listed the position on a state or national Internet website.
 - (b) The state may issue a permit to a school system to hire an applicant one time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.

Authority: T.C.A. § 49-1-302, 49-5-101, and 49-5-108.

(10-51)

**CHAPTER 0520-2-4
LICENSURE**

AMENDMENT

Paragraph (5) of Rule 0520-2-4-.05 The Praxis Series: Professional Assessments for Beginning Teachers is amended by deleting the paragraph in its entirety and substituting instead the following language so that as amended the paragraph shall read:

(5) The examinations and corresponding required scores are as follows:

Tennessee Educator Licensure Examinations

Test Code	Endorsement Area	Test Title	Minimum Qualifying Score	Effective Date Sept. 1
0522	All Areas (See Note)	Principles of Learning and Teaching, K-6 or	155	1998
0523		Principles of Learning and Teaching, 5-9 or	154	1999
0524		Principles of Learning and Teaching, 7-12	159	1998
1010	Administrator	School Leader Licensure Assessment	156	2001
0700	Agricultural Education	Agriculture	530	1998
0133	Art	Art: Content Knowledge	150	1998
0132	Art	Choice of Art: Content, Traditions, Criticism & Aesthetics or	140	2001
0131	Art	Art: Art Making	155	2001
0235	Biology	Biology: Content Knowledge	148	2002
0233	Biology	Choice of Biology Content Essays or	146	1999
0433	Biology	General Science Content Essays	130	1999
0100	Business/Accounting	Business Education	570	1996
0245	Chemistry	Chemistry: Content Knowledge	152	2002
0431	Chemistry	General Science: Content Knowledge, Part 1	138	1995
0020	Early Childhood Education	Early Childhood Education	570	1996
		Elementary Education: Content Knowledge	140	2003
		Reading Across the Curriculum: Elementary	NM	2003
0571	Earth Science	Earth Science: Content Knowledge	146	2002
0431	Earth Science	General Science: Content Knowledge, Part 1	138	1998
0910	Economics	Economics	530	2002
0011	Elementary Education K-8, 1-8	Elementary Education: Curriculum, Instruction, and Assessment	159	1998
	Elementary Education K-8, 1-8	Elementary Education: Content Knowledge or	140	2003
		Middle School Content Knowledge	150	2001
	Elementary Education K-8, 1-8	Reading Across the Curriculum: Elementary	NM	2003
0041	English	Language, Literature, Composition: Content Knowledge	157	1995
0043	English	Language, Literature, Comp.: Pedagogy	145	1999
0360	English as a Second Language	Teaching English as a Second Language	530	1999
0120	Family & Consumer Science	Family and Consumer Science	580	1996
0920	Geography	Geography	520	1996
0930	Government	Government/Political Science	560	1996
0550	Health	Health Education	570	1997
0940	History	World and U.S. History	490	2002
	Languages:			
0173	French	French: Content Knowledge	160	1998

0171	French	French: Productive Language Skills	165	2001
0181	German	German: Content Knowledge	139	1998
0600	Latin	Latin	540	1996
0191	Spanish	Spanish: Content Knowledge	152	1995
0192	Spanish	Spanish: Productive Language Skills	154	1999
0310	Librarian	Library Media Specialist	600	2000
0560	Marketing	Marketing Education	640	1999
0061	Mathematics	Mathematics: Content Knowledge	136	1995
0065	Mathematics	Mathematics: Pedagogy	125	1999
0146	Middle Grades 5-8	Middle School: Content Knowledge	150	2000
0201	Middle Grades 5-8	Reading Across the Curriculum: Elementary	NM	2003
0113	Music	Music: Content Knowledge	150	1998
0111	Music	Music: Concepts and Processes	145	2001
0091	Physical Education	Physical Education: Content Knowledge	152	1995
0092	Physical Education	Physical Education: Movement Forms - Analysis & Design	148	1999
0265	Physics	Physics: Content Knowledge	144	2002
0262	Physics	Choice of Physics: Content Essays or	135	1999
0433	Physics	General Science Content Essays	130	1999
0390	Psychology	Psychology	560	1997
0420	School Counselor	School Guidance and Counseling	580	1996
0400	School Psychologist	School Psychologist	590	1998
0950	Sociology	Sociology	540	1996
0353	Special Education: All Special Education Areas (See Note)	Education of Exceptional Children: Core Content Knowledge	NM	TBA
0271	Hearing	Special Education: Education of Deaf and Hard of Hearing Students	163	2001
0690	Preschool/Early Childhood	Special Education: Preschool/Early Childhood	560	1997
0330	Speech/Language	Speech-Language Pathology	600	2000
0280	Vision	Special Education: Teaching Students with Visual Impairments	700	2001
0220	Speech	Speech Communications	570	1998
0050	Technology Education	Technology Education	580	1996
0640	Theatre	Theatre	610	1997

Note: "NM" means score submission required without minimum score established.

Note: Candidates seeking licensure in early childhood education, PreK-3, or early childhood special education PreK-1 will take Principles of Learning and Teaching (PLT) K-6. Candidates seeking licensure in elementary education, K-8 or 1-8, may choose either PLT K-6 or PLT 5-9. Candidates seeking licensure in middle grades 5-8 will take PLT 5-9. Candidates seeking licensure in secondary education areas will take PLT 7-12. Candidates seeking licensure in K-12, or preK-12 areas may choose PLT K-6, PLT 5-9, or PLT 7-12.

Note: Candidates in elementary education, K-8 or 1-8, may choose either Elementary School Content Knowledge or Middle School Content Knowledge.

Note: Candidates in biology and physics may choose either the general science content essay or the subject area (biology or physics) content essays. Candidates seeking an additional endorsement in biology, chemistry, earth science, or physics will be required to take only the content knowledge exam for endorsement in the additional science area.

Note: The Education of Exceptional Students: Core Content knowledge test applies to the following special education areas: Modified Program, Comprehensive Program, Hearing, Vision and Preschool/Early Childhood. The test will become effective pending completion of the rule making process.

Authority: T.C.A. § 49-1-302 and 49-5-5605.

(10-52)

The proposed rules set out herein were properly filed in the Department of State on the 31st day of October, 2002, 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 february, 2003. (10-47 through 10-52)

THE TENNESSEE BOARD OF REGENTS - 0240
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE

EAST TENNESSEE STATE UNIVERSITY
CHAPTER 0240-3-2
STUDENT DISCIPLINARY RULES

Presented herein are proposed amendments of the Tennessee Board of Regents submitted pursuant to Tennessee Code Annotated, § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Board of Regents 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 in Suite 350 of the Genesco Park Building located at 1415 Murfreesboro Road, Nashville, TN 37217 and in the Department of State, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue, North, Nashville, TN 37219, and must be signed by twenty-five (25) persons who will be affected by the rules, 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: Mary M. Slater, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217, Tennessee Board of Regents, 615-366-4438.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (m) of paragraph (2) of rule 0240-3-2-.04 Disciplinary Sanctions is amended by deleting the text of the subparagraph and substituting the following language so that as amended subparagraph (m) shall read:

- (m) Interim or summary suspension. Though as a general rule, the status of a student accused of violations of these regulations should not be altered until a final determination has been made in regard to the charges against him, summary suspension may be imposed upon a finding by the appropriate institutional official that the continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused or of any other member of the institution community or its guest, destruction of property, or substantial disruption of classroom or other campus activities. An interim suspension may be invoked only by the president or his designee, the Provost/Vice President for Academic Affairs, or the Senior Associate Vice President for Student Affairs and Dean of Students in consultation with other university officials. In any case of immediate suspension, the student shall be given an opportunity at the time of the decision or immediately thereafter to contest the suspension, and if there are disputed issues of fact or cause and effect, the student shall be provided a hearing on the suspension as soon as practicable.

Authority: T.C.A. §49-8-203.

Subparts (ii) and (iii) of part 2. of subparagraph (a) of paragraph (2) of rule 0240-3-2-.05 Disciplinary Procedures is amended by deleting the text of the subparts in their entirety and substituting instead the following language so that as amended subparts (ii) and (iii) shall read:

- (ii) The Assistant Vice President for Student Life and Leadership, where the alleged violation is of the regulations of the Inter-Fraternity Council (IFC) or the Panhellenic Council (PC), or the Pan-Hellenic Council (PC).
- (iii) The Senior Associate Vice President for Student Affairs and Dean of Students, where the alleged violation is of University regulations other than those of the RHA, the IFC or the PCs.

Part 6. of subparagraph (a) of paragraph (2) of rule 0240-3-2-.05 Disciplinary Procedures is amended by adding the words “Senior Associate” and “and Dean of Students” so that as amended part 6. shall read:

- 6. The Senior Associate Vice President for Student Affairs and Dean of Students or his/her designee is authorized to hear under the institutional Administrative Procedures all cases of alleged misconduct of students from April 15 through September 15 of each year if judicial boards are not functioning.

Subparts (ii) and (iii) of part 1. of subparagraph (b) of paragraph (2) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by the subparts in their entirety and substituting instead the following language so that as amended subparts (ii) and (iii) shall read:

- (ii) The Assistant Vice President for Student Life and Leadership, where the alleged violation is of the regulations of the Inter-Fraternity council (IFC), the Panhellenic Council (PC), or the Pan-Hellenic Council.
- (iii) The Senior Associate Vice President for Student Affairs and Dean of Students where the alleged violation is of University regulations other than those of the RHA, the IFC or the PCs.

Subparts (i) and (ii) of part 5. of subparagraph (b) of paragraph (2) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the subparts in their entirety and substituting instead the following language so that as amended subparts (i) and (ii) shall read:

- (i) Cases heard by the Director of Housing or the Assistant Vice President for Student Life and Leadership may be appealed to the Senior Associate Vice President for Student Affairs and Dean of Students.
- (ii) Cases heard by the Senior Associate Vice President for Student Affairs and Dean of Students may be appealed to the President or his designee.

Subpart (iii) of part 5. of subparagraph (b) of paragraph (2) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting subpart (iii) in its entirety.

Part 1. of subparagraph (c) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words “Senior” and “and Dean of Students” so that as amended part 1. shall read:

1. The University Judicial Committee shall be composed of the Senior Associate Vice President for Student Affairs and Dean of Students, President of the Student Government Association (SGA), Chief Justice of SGA, an Associate Justice, and three faculty. Alternates for the Chief Justice and Associate Justice shall be selected by the SGA to hear cases on appeal from the Student Court.

Part 1. of subparagraph (d) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the subparagraph in its entirety and substituting the following language so that as amended part 1. shall read:

1. The University Judicial Committee shall exercise the highest judicial authority on campus, next to that of the Senior Associate Vice President for Student Affairs and Dean of Students and the University President or his designee. This committee's authority shall include the right to suspend or expel a student. The University President reserves the right to uphold or reverse any decision made by any judicial body.

Part 3. of subparagraph (d) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the word "and" and adding the word "Council" so that as amended part 3. shall read:

3. The Residence Hall Association, the Inter-Fraternity Council, the Panhellenic Council, and the Pan-Hellenic Council shall provide, through their respective constitutions, the powers and limitations of their respective judicial boards, all of which shall be subordinate to the Student Court.

Part 1. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "Senior" and "and Dean of Students" so that as amended part 1. shall read:

1. Any member of the university community may file a complaint against any student for misconduct. Complaints shall be prepared in writing and directed to the Senior Associate Vice President for Student Affairs and Dean of Students. A complaint should be submitted as soon as possible after the event takes place, preferably within ten (10) days of the alleged misconduct.

Subpart (i) of part 1. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the subpart in its entirety and substituting the following language so that as amended subpart (i) shall read:

- (i) Violations of official University regulations other than regulations of the RHA, the IFC or the PCs shall be reported directly to the Senior Associate Vice President for Student Affairs and Dean of Students, who shall either direct that the case be reviewed under the Institutional Administrative Procedures or referred to the appropriate judicial board.

Subpart (iii) of part 1. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the subpart in its entirety and substituting the following language so that as amended subpart (iii) shall read:

- (iii) Violations of the Student Government Constitution or Code of Laws shall be reported to the Student Government Vice President, who shall refer the case to the Senior Associate Vice President for Student Affairs and Dean of Students. The Senior Associate Vice President for Student Affairs and Dean of Students shall direct that the case be heard by the Student Court.

Part 2. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by deleting the text of the part and substituting the following language so that as amended part 2. shall read:

2. All judicial decisions must be reported in writing to the Office of the Senior Associate Vice President for Student Affairs and Dean of Students within two (2) class days from such time as the decision has been reached.

Part 4. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "Senior Associate" and "and Dean of Students" so that as amended part 4. shall read:

4. The official records of all cases shall be maintained by the Office of Senior Associate Vice President for Student Affairs and Dean of Students.

Part 5. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "Senior Associate" and "Dean of Students" so that as amended part 5. shall read:

5. All official correspondence concerning the decision of a judicial board, court, or committee shall be executed by the Senior Associate Vice President for Student Affairs and Dean of Students or his designated representatives except in cases involving interpretation of the Student Government Constitution or Code of Laws. The Chief Justice of the Student Court shall make a written report of the decision and the circumstances surrounding it, taking care to exclude any information of a personal nature, to the Secretary of Legislative Affairs.

Part 7. of subparagraph (e) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "Senior Associate" and "and Dean of Students" so that as amended part 7 shall read:

7. All subsequent hearings concerning readmission of students or reinstatement of organizational charters shall be initiated through the Senior Associate Vice President for Student Affairs and Dean of Students or his designated representative.

Subparts (i) and (ii) of part 1. of subparagraph (f) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "Senior" and "and Dean of Students" so that as amended subparts (i) and (ii) shall read:

- (i) The University Judicial Committee shall hear those cases involving a student who is accused of violating general University regulations and who, if found guilty, may be subjected to suspension or expulsion from the institution, and other cases deemed appropriate by the Senior Associate Vice President for Student Affairs and Dean of Students.
- (ii) The Student Court shall have original jurisdiction in those cases involving alleged violations of general University regulations which do not warrant suspension or expulsion. The Student Court shall also hear those cases involving alleged violations of the Student Government Constitution or Code of Laws, and any other cases deemed appropriate by the Senior Associate Vice President for Student Affairs and Dean of Students.

Part 2. of subparagraph (g) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words "or his designee" so that as amended part 2. shall read:

2. Final University appeal shall be to the University President or his designee.

Subpart (i) of part 3. of subparagraph (g) of paragraph (3) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words “Senior Associate” and “and Dean of Students” so that as amended subpart (i) shall read:

- (i) If the accused desires to appeal, a statement of reasons for appealing must be forwarded to the Senior Associate Vice President for Student Affairs and Dean of Students or his designee. This statement must be filed within three (3) days following receipt by the accused of a copy of the decision being appealed.

Part 15. of subparagraph (b) of paragraph (4) of rule 0240-3-2-.05 Disciplinary Procedures is further amended by adding the words “Senior Associate” and “and Dean of Students” so that as amended part 15. shall read:

15. Any question of interpretation regarding the Student Code of Conduct shall be referred to the Senior Associate Vice President for Student Affairs and Dean of Students for final determination.

Part 1. of subparagraph (g) of paragraph (6) of rule 0240-3-2-.05 Disciplinary Procedures is amended by deleting the words “Student Activities Center” and adding instead the words “Center for Student Life and Leadership” so that as amended part 1. shall read:

1. All student organizational functions involving the serving or consumption of alcohol shall be registered with the Center for Student Life and Leadership at least (7) business days prior to the date of the function. When functions are to take place in University owned, leased or controlled property, policies concerning use of that property should be consulted and must be complied with.

Authority: T.C.A. §49-8-203.

Paragraph (1) of rule 0240-3-2-.06 Traffic and Parking Regulations is amended by adding new subparagraph (d). New subparagraph (d) shall read:

- (d) Vehicles determined to be abandoned, as defined by TCA §55-16-103, will be removed from campus. Public Safety will make every effort to identify the owner of an abandoned vehicle and notify that individual of the need to remove the vehicle. Owners of abandoned vehicles will be notified by certified mail that their vehicle will be towed by a specific date if Public Safety is not advised of owner’s intent to remove vehicle from the grounds of the university. The letter will also advise owner of his/her responsibility for tow charges and storage fee. The definition of abandoned vehicles includes the following:
 1. Over four years old and left unattended on public property for more than 30 days;
 2. Is in an obvious state of disrepair and is left on public property for more than 10 days;

Authority: T.C.A. §49-8-203.

EAST TENNESSEE STATE UNIVERSITY**CHAPTER 0240-4-2
STUDENT HOUSING RULES****AMENDMENTS**

Subparagraph (g) of paragraph (3) of rule 0240-4-2-.02 Residence Hall conduct and Disciplinary Sanctions is amended by deleting the word “of” and substituting the word “or” so that as amended subparagraph (g) shall read:

(g) Conference with Director or Associate Director of Housing and Residence Life;

Subparagraph (n) of paragraph (3) of rule 0240-4-2-.02 Residence Hall Conduct and Disciplinary Sanctions is further amended by deleting the subparagraph and substituting the following language so that as amended subparagraph (n) shall read:

(n) Referral to Senior Associate Vice President for Student Affairs and Dean of Students;

Authority: T.C.A. §49-8-203.

Rule 0240-4-2-.04 Visitation and Lifestyle Options is amended by deleting the first paragraph and substituting instead the following language so that as amended rule 0240-4-2-.04 shall read:

The Office of Housing and Residence Life strives to provide affordable, enjoyable, safe, and well-maintained services and facilities for students living on campus. It is also a goal to establish interactive and inclusive communities within the residence facilities through the participation and involvement of all members. A variety of lifestyle options provides opportunities for students to engage in active social learning in a structural environment such as the residence halls. This environment can allow for lifestyle choices, yet set high expectations for students and encourage value clarification, independence and autonomy.

Subparagraph (d) of paragraph (3) of rule 0240-4-2-.04 Visitation and Lifestyle Options is further amended by deleting the word “halls” and substituting the words “residence facilities” so that as amended subparagraph (d) shall read:

(d) Designation of bathroom facilities: For residence facilities with individual or suite bathrooms, visitors shall use these. For those residence facilities with specified bathrooms for members of the opposite sex, visitors shall use these. In residence facilities with no such designation, the Hall Staff shall designate one during visitation.

Part 7. of subparagraph (d) of paragraph (4) of rule 0240-4-2-.07 Special Regulations Applicable to Buccaneer Village (Married Student Housing) is further amended by deleting the text of the part and substituting instead the following language so that as amended part 7. shall read:

8. Resident probation from Director of Housing and Residence Life or designee;

Parts 9. and 10. of subparagraph (d) of paragraph (4) of rule 0240-4-2-.07 Special Regulations Applicable to Buccaneer Village (Married Student Housing) is further amended by deleting the text of the parts and substituting instead the following so that as amended parts 9. and 10. shall read:

9. Dismissal from Buccaneer Village by Director of Housing and Residence Life or designee.

10. Referral to Senior Associate Vice President for Student Affairs and Dean of Students.

Authority: T.C.A. §49-8-203.

Subparagraph (d) of paragraph (3) of rule 0240-4-2-.07 Special Regulations Applicable to Buccaneer Village (Married Student Housing) is further amended by deleting the word “Office” and substituting the word “Director” so that as amended subparagraph (d) shall read:

- (d) No outdoor construction of any type, including fences or canopies, shall be allowed without written consent of the Director of Housing and Residence Life, and no landscaping or gardening shall be permitted except as determined by the University.

Subparagraph (g) of paragraph (3) of rule 0240-4-2-.07 Special Regulations Applicable to Buccaneer Village (Married Student Housing) is further amended by deleting the word “Office” and substituting the word “Director” so that as amended subparagraph (g) shall read:

- (g) The residents shall not erect an aerial or satellite dish on the premises. Residents shall display no signs, placards or banners of any type in or about the premises without the prior approval of the Director of Housing and Residence Life.

Authority: T.C.A. §49-8-203.

Subparagraph (g) of paragraph (3) of rule 0240-4-2-.08 Miscellaneous is amended by deleting the word “in” and substituting the word “out” so that as amended subparagraph (g) shall read:

- (g) All residents leaving University housing must remove their belongings from the residence halls and follow check-out procedures with the hall staff within twenty-four (24) hours of withdrawing during a semester and twenty-four (24) hours after their last class at the end of the semester.

Subparagraph (h) of paragraph (3) of rule 0240-4-2-.08 Miscellaneous is further amended by deleting the word “from” and substituting the word “of” so that as amended subparagraph (h) shall read:

- (h) Appeals of charges and general assessments will be heard between the hours of 2:00 p.m. and 4:30 p.m. during the last week of each semester and at other times by appointment only.

Paragraph (6) of rule 0240-4-2-.08 Miscellaneous is further amended by deleting the word “hall” and substituting the word “facilities” and adding the word “the” so that as amended paragraph (6) shall read:

- (6) Approval must be obtained for all special events and displays held within or adjacent to the residence facilities. Approval may be obtained through the Office of Housing and Residence Life. All signs and other items connected with the special event must be removed and the area cleaned within forty-eight (48) hours after the event.

Authority: T.C.A. §49-8-203.

TENNESSEE TECHNOLOGICAL UNIVERSITY**CHAPTER 0240-3-6
STUDENT DISCIPLINARY RULES****AMENDMENTS**

Paragraph (7) of rule 0240-3-6-.08 Registration of Motor Vehicles is amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (7) shall read;

- (7) The vehicle registration fee, per permit, for faculty is \$30 for Fall Semester, \$20 Spring and \$10 Summer. Replacement fees for lost or stolen permits: Fall \$15, Spring \$10, and Summer \$5. Staff permits are \$10 Fall Semester, \$7 Spring, and \$5 Summer. Replacement fees for lost or stolen permits: Fall \$5, Spring \$3, and Summer \$2. The initial permit for students is included in the General Access Fee. Each additional student permit is \$30. Replacement fees for lost or stolen permits: Fall \$15, Spring \$10, and Summer \$5. Non-students attending Tennessee Tech, such as Nashville Tech, EMT's and Paramedics, etc.: Fall \$30, Spring \$20, and Summer \$10. Permits will be replaced free of charge when the numbers are returned intact to the Tennessee Tech Police Office. Anyone purchasing additional permits will be required to pay full current price.

Authority: T.C.A. §49-8-203. Proposed Rules

**CHAPTER 0240-4-6
STUDENT HOUSING RULES****Amendments**

Paragraph (9) of rule 0240-4-6-.07 Miscellaneous is amended by deleting the text of the paragraph and substituting the following language so that as amended paragraph (9) shall read:

- (9) All open flame items, such as kerosene lamps, candles and incense, are prohibited in residence halls.

Paragraph (12) of rule 0240-4-6-.07 Miscellaneous is further amended by deleting the text of the paragraph and substituting instead the following so that as amended paragraph (12) shall read:

- (12) Open lobby hours are defined as 24 hours per day, seven days per week.

Authority: T.C.A. §49-8-203.

(10-19)

COLUMBIA STATE COMMUNITY COLLEGE**CHAPTER 0240-3-9
STUDENT DISCIPLINARY RULES****AMENDMENTS**

Paragraph (2) of rule 0240-3-9-.02 Disciplinary Offenses is amended by adding a new subparagraph (u). New subparagraph (u) shall read:

- (u) Harassment. Any form of harassment including, but not limited to, racial harassment, sexual harassment or stalking is prohibited.

Authority: T.C.A. §49-8-203.

(10-20)

**MOTLOW STATE COMMUNITY COLLEGE
CHAPTER 0240-3-12**

STUDENT DISCIPLINARY RULES

AMENDMENTS

Paragraph (2) of rule 0240-3-12-.06 Vehicle Registration and Parking is amended by deleting the word “of” and substituting the word “by” so that as amended paragraph (2) shall read:

- (2) Designated parking areas are provided for students with disabilities. A special parking decal for students with disabilities is available from the College Nurse upon the recommendation of a physician or based on an evaluation of the disability by the Nurse.

Authority: T.C.A. §49-8-203.

(10-21)

**NASHVILLE STATE TECHNICAL INSTITUTE
CHAPTER 0240-3-17**

STUDENT DISCIPLINARY RULES

AMENDMENTS

Paragraph (7) of rule 0240-3-17-.06 Traffic and Parking Regulations is amended by deleting the text of the paragraph and substitute instead the following language so that as amended paragraph (7) shall read:

- (7) Appeal of Citation
 - a. Appeal forms should be completed with a copy of the citation attached. Both copies should be returned to the office of the Assistant to the Vice President for Academic/Institutional Services, Student Services Center, Office D-7, where a ruling will be made to dismiss or sustain the citation.
 - b. The person receiving a citation may obtain an appeal form from the Security Office, (A-70). Appeals of ticket citations must be submitted within 72 hours after the ticket is issued.
 - c. Appellants will be informed through the mail as to the results of the appeal.

Authority: T.C.A. §49-8-203.

(10-22)

**PELLISSIPPI STATE TECHNICAL COMMUNITY COLLEGE
CHAPTER 0240-3-18
STUDENT DISCIPLINARY RULES**

AMENDMENTS

Subparagraph (g) of paragraph (3) of rule 0240-3-18-.06 Traffic and Parking Regulations is amended by deleting the word “driveway” and substituting instead the word “right-of-way” so that as amended subparagraph (g) shall read:

- (g) Obstructing the right-of-way;

Subparagraphs (a),(b), and (c) of paragraph (7) of rule 0240-3-18-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraphs and substituting instead the following language so that as amended subparagraphs (a), (b) and (c) shall read:

- (a) For illegal parking in loading zones, parking out of classification - \$15.00 all violations.
- (b) For improper parking in loading zones, parking out of classification - \$15.00 all violations.
- (c) For illegal parking in fire zone - \$15.00 all violations. For illegal parking in the disabled zone - \$100.00. Motor vehicles illegally parking in these areas are subject to being towed.

Subparagraph (f) of paragraph (7) of rule 0240-3-18-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (f) shall read:

- (f) For failure to display hang tag or failure to remove a hang tag when required - \$15.00.

Subparagraph (a) of paragraph (8) of rule 0240-3-18-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (a) shall read:

- (a) An Appeals Committee to hear cases when the person receiving a citation feels that he has (a) justifiable reason(s) which may affect the citation received will consist of one student, one administrator/faculty member and one staff member.

Paragraph (8) of rule 0240-3-18-.06 Traffic and Parking Regulations is further amended by adding new subparagraph (h) and (i). New subparagraphs (h) and (i) shall read:

- (h) The person receiving the citation and appealing it must have his/her appeal heard at the campus where the citation was given.
- (i) The appeals committee’s decision is final.

Authority: T.C.A. §49-8-203.

Paragraph (2) of rule 0240-18-.08 Registration of Vehicles is further amended by deleting the word “not” from the paragraph so that as amended paragraph (2) shall read:

- (2) Hang tags are required for motorcycles, motorbikes and scooters, but those vehicles should only park in areas designated for motorcycles.

Paragraph (7) of rule 0240-3-18-.08 Registration of Vehicles is further amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (7) shall read:

- (7) The parking hang tag may be displayed from the rear view mirror of the vehicle or placed on the dash. The registration number must be visible.

Paragraph (8) of rule 0240-3-18-.08 Registration of Vehicles is further amended by deleting the text of the paragraph in its entirety and renumbering the remaining paragraphs accordingly.

Paragraph (9) (formerly paragraph (10)) of rule 0240-3-18-.08 Registration of Vehicles is further amended by deleting the word "A-1" and substituting the word "V-1" so that as amended paragraph (9) shall read:

- (9) Visitors are defined as persons not connected with the College but who occasionally have business or other reasons to be on the campus. Designated visitor space will be the V-1 parking area or in any open (O) lots.

Authority: T.C.A. §49-8-203.

(10-23)

NORTHEAST STATE TECHNICAL COMMUNITY COLLEGE

CHAPTER 0240-3-20 STUDENT DISCIPLINARY RULES

AMENDMENTS

Paragraph (3) of rule 0240-3-20-.05 Disciplinary Procedures is amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (3) shall read:

- (3) Institutional Disciplinary Procedures. Persons who allege that a student has violated certain institutional rules or regulations or ordinances or laws of the city, county, state or federal government must make these charges known to the President, Vice President for Academics and Student Affairs or Assistant Vice President of Student Affairs as soon as possible after the alleged violation occurs. If it is determined that there is probable cause that the violation occurred, the Assistant Vice President of Student Affairs will notify the student in writing by mail or in person at least five working days prior to a hearing. The notice will include:
 - (a) The specific charge, the rule violated, possible sanctions that could be imposed.
 - (b) Notice of a hearing before the Student Discipline Committee including the date, place and time of the meeting.
 - (c) The student may have an advisor present at the hearing. The advisor may not participate in or address the hearing unless permission is granted by the chairperson.
 - (d) Material evidence may be presented and the student may cross-examine the witness(es).
 - (e) The student shall be entitled to be present throughout the presentation of evidence, to know the identity of witness(es) against him or her and to present evidence including witness(es) who may speak on the student's behalf.

- (f) A verbatim record of the hearing will be made available to the student upon request.
- (g) The Student Discipline Committee will submit a recommendation to the Assistant Vice President of Student Affairs who will determine appropriate disciplinary or other action.
- (h) The student may appeal this decision to the Vice President for Academic and Student Affairs and if needed, the President of the college. The President's decision is final except in those cases in which appeal is provided, by policy, to the Tennessee Board of Regents.

Authority: T.C.A. §49-8-203.

Subparagraph (h) of paragraph (2) of rule 0240-3-20-.06 Traffic and Parking Regulations is amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (h) shall read:

- (h) Visitors and guests receiving a citation should return it to the Office of Safety and Security, Room C-2401.

Authority: T.C.A. §49-8-203.

(10-24)

The proposed rules set out herein were properly filed in the Department of State on the 17th day of October, 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 February, 2003. (10-18 through 10-24)

**THE TENNESSEE DEPARTMENT OF STATE - 1360
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-8
UNIFORM COMMERCIAL CODE**

Presented herein is a proposed amendment of a department rule submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the department to promulgate this rule 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 amendment is published. Such petition to be effective must be filed on the 6th Floor of the William R. Snodgrass Tower located at 312 Eighth Avenue North, Nashville, TN 37243, and in the Department of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 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 amendment, contact Bob Grunow, Director of Business Services, Department of State, William R. Snodgrass Tower, 6th Floor, 312 Eighth Avenue North, Nashville, TN 37243, and (615)-741-0584.

The text of the proposed amendment is as follows:

AMENDMENT

Rule 1360-8-1-.09, Document Form Requirements, paragraph (1) is amended by adding the following language after the citation "TCA §47-9-521,": "or to any other national form requirements adopted after July 1, 2001, by the International Association of Commercial Administrators," so that as amended the paragraph shall read:

- (1) UCC initial financing statements and amendment documents in written form shall conform to the form requirements specified in TCA §47-9-521, or to any other national form requirements adopted after July 1, 2001, by the International Association of Commercial Administrators, and, if applicable, shall include the statutory language required in TCA §67-4-409(b)(5)(C).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 47-9-521, 47-9-526, 67-4-409(b).*

The proposed rules set out herein were properly filed in the Department of State on the 25th day of October, 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 February, 2003. (10-33)

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pg. 42

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules dealing with Medicaid and TennCare programs, Chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2002) - Filed July 1, 2002; effective through December 13, 2002. (07-02)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules dealing with Medicaid and TennCare programs, Chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2002) - Filed July 1, 2002; effective through December 13, 2002. (07-01)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules concerning the Families First Program, chapter 1240-1-50 Standard of Need/Income, 8 T.A.R. (August 2002) - Filed July 3, 2002; effective December 15, 2002; effective through December 15, 2002. (07-03)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules concerning the Families First Program, chapter 1240-1-50 Standard of Need/Income, 8 T.A.R. (August 2002) - Filed July 8, 2002; effective December 15, 2002; effective through December 20, 2002. (07-06)
- 1680 - Department of Transportation - Central Services Division Permit Section - Public necessity rules relative to movements of manufactured homes on Tennessee highways, Chapter 1680-2-2 Overweight and Overdimensional Movement on TN Highways, 10 T.A.R. (October, 2002) - Filed September 30, 2002; effective through March 14, 2003. (09-48)

THE TENNESSEE STATE BOARD OF ACCOUNTANCY - 0020

CHAPTER 0020-1

BOARD OF ACCOUNTANCY, LICENSING AND REGISTRATION REQUIREMENTS

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Submitted herewith are proposed amendments to Chapter 0020-1 of the rules of the Tennessee State Board of Accountancy for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Board has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4). Tenn. Code Ann. § 4-5-209(a)(4) authorizes an agency to adopt public necessity rules when “[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of rules.”

These rules are being promulgated because of recent amendments to Tenn. Code Ann. Title 62, Chapter 1, that require the Tennessee State Board of Accountancy to add score requirements and grading provisions for written certified public accountant ("CPA") examinations. Pursuant to Tenn. Code Ann. § 62-1-106(d) "the board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required by the applicant for a certificate; provided, that the board shall to the extent possible see to it that the examination itself, grading of the examination, and the passing grades, are uniform with those applicable in all other states." It is necessary to promulgate these rules to continue in effect the examination and grading process for CPA examinations and to prevent confusion that may occur because the examination grading provisions were deleted from Tenn. Code Ann. § 62-1-106(e) through (i) by the enactment of Chapter No. 654, §§ 4 and 5, Public Acts of 2002. In addition, the rules are being promulgated to prevent any confusion that may have arisen since the release of the CPA examination grades in August, 2002. These rules are required to avoid any possible confusion and clarify the method of grading the CPA examination. The 2002 Public Act appears to have anticipated that a computerized examination, with a new grading system, would be in place at the time of the effective date of the Act (April 24, 2002). For at least the next year, however, boards of accountancy across the United States will continue to rely upon the written examination and will not use a computerized examination. As a result, it is necessary to add the grading provisions, which specifically include the requirement for a passing grade of seventy-five (75) for written examinations, to the Board's rules.

Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, these public necessity rules should be implemented immediately to eliminate any confusion that may presently exist and to continue the current grading procedures for the next administration of the CPA examination in November, 2002 and until permanent rules are implemented.

The Tennessee State Board of Accountancy filed a Notice of Rulemaking Hearing to adopt these as permanent rules on September 30, 2002.

For a copy of this public necessity rule contact: Darrel E. Tongate, Executive Director, State Board of Accountancy, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 741-2550.

Darrel E. Tongate
Executive Director
Tennessee State Board of Accountancy

**PUBLIC NECESSITY RULES
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
TENNESSEE STATE BOARD OF ACCOUNTANCY**

**CHAPTER 0020-1
BOARD OF ACCOUNTANCY, LICENSING AND REGISTRATION REQUIREMENTS
AMENDMENTS**

Rule 0020-1-.06 Examinations is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-1-.06 EXAMINATIONS.

- (1) The examination of applicants for certification shall consist of the Uniform CPA Examination supplemented with a section on ethics prepared or approved by the Board. The examination may be further supplemented with other material which the Board in its discretion deems appropriate.
- (2) Notice of the date, time and place of the written examination shall be given at least ninety (90) days prior to each examination by publication in newspapers of general circulation in the cities of Memphis, Nashville, Knoxville and Chattanooga. After January, 2004, publication in the newspapers will no longer be required. Examinations may, in the discretion of the Board, be administered in more than one (1) city in the state.
- (3) The Board shall cause the examination for certification to be graded by the AICPA. The Board may recognize the grades assigned by the AICPA. Applicants may request a grade review if the Board permits such, and the applicant pays whatever administrative charges are assessed for a grade review.
- (4) The notification given to the exam candidate regarding the grades and requirements that the candidate must achieve to pass a particular exam shall govern the grading of that exam.
- (5) All examination candidates who take a written examination prior to January, 2004, shall be required to pass all sections of the examination provided for in Tenn. Code Ann. § 62-1-106(d), in order to qualify for a certificate.
- (6) The following grading system shall apply to the written CPA examination through the last written exam:
 - (a) A passing grade for each section shall be seventy-five (75).
 - (b) If at a given sitting of the examination an applicant passes two (2) or more but not all sections, then the applicant shall be given credit for those sections that the applicant has passed and need not sit for reexamination in those sections, provided that:
 1. At that sitting the applicant wrote all sections of the examination for which the applicant does not have credit;
 2. The applicant attained a minimum grade of fifty (50) on each section taken at that sitting;
 3. The applicant passed the remaining sections of the examination within six (6) consecutive examinations given after the one at which the first sections were passed;
 4. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections for which the applicant does not have credit; and
 5. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of fifty (50) on each section taken at that sitting.
- (7) An applicant shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, had the applicant taken the examination in this state.
- (8) The Board may in particular cases waive or defer any of the requirements of paragraphs (5), (6) and (7) regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet such requirement(s).

- (9) An applicant may be required to pass an examination covering the rules of ethics and professional conduct promulgated by the Board; such examination may be part of the examination required in Tenn. Code Ann. § 62-1-106(d) or may be in a separate examination.
- (10) The Board may provide for a third party administering the examination to charge each applicant a fee for each section of the examination or reexamination taken by the applicant.

Authority: Tenn. Code Ann. §§ 62-1-105(e)(9), 62-1-106 and 2002 Tenn. Pub. Acts ch. 654 § § 4 and 5

The public necessity rules set out herein were properly filed in the Department of State on the 28th day of October, 2002, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 11th day of August, 2002. (10-35)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF AGRICULTURE - 0080

There will be a hearing before the Tennessee Department of Agriculture to consider the promulgation of rules pursuant to Tennessee Code Annotated, Section 44-17-118. 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 Ed Jones Auditorium of the Tennessee Department of Agriculture, Hogan Road, Nashville, Tennessee at 10:00 a.m. on the 16th day of December, 2002.

Written comments will be considered if received by the close of business, December 16, 2002, at the office of K. David Waddell, Tennessee Department of Agriculture, P.O. Box 40627 Melrose Station, Nashville, TN 37204.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Department of Agriculture to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at P.O. Box 40627 Melrose Station, Nashville, TN 37204, and (615) 837-5115.

For a copy of this notice of rulemaking hearing, contact: K. David Waddell, Tennessee Department of Agriculture, P.O. Box 40627 Melrose Station, Nashville, TN, and (615) 837-5105.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0080-2-15 DOG AND CAT DEALERS

NEW RULES

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0080-2-15-.01 Definitions	0080-2-15-.07 Compliance with Standards
0080-2-15-.02 Application	0080-2-15-.08 Access and Inspection of Records and Property
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0080-2-15-.04 Conditions for Granting a License	0080-2-15-.10 Confiscation and Destruction of Animals
0080-2-15-.05 Duration of License and Termination of License	0080-2-15-.11 Records
0080-2-15-.06 Denial of Initial License Application	

0080-2-15-.01 DEFINITIONS.

When used in this chapter, unless the context requires otherwise:

- (1) "Department" means the Tennessee Department of Agriculture.
- (2) "Dealer" means, for the purpose of this chapter, any person who buys or sells twenty-five (25) or more dogs or cats in any one (1) calendar year for resale.

Authority: T.C.A. §§44-17-118.

0080-2-15-.02 APPLICATION

- (1) Any person operating or desiring to operate as a dealer, except persons who are exempted by this chapter must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form furnished by the Department. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the Department.
- (2) Any person operating or desiring to operate as a dealer at more than one physical location must apply for and obtain a separate license for each location.
- (3) The following persons are exempt from the licensing requirements of this part:

Any person who buys or sells fewer than twenty-five (25) dogs or cats in any calendar year within the State of Tennessee or for transportation out of the state.

Any person licensed under the provisions of Title 9 of the Code of Federal Regulations. (9 CFR Parts 2 and 3)

Any person who is a not for profit corporation or government agency.

Authority: T.C.A. §44-17-118.

0080-2-15-.03 FEES.

- (1) Each applicant for a license under Tenn. Code Ann. § 44-17-101 et seq. and any amendment thereto shall pay the appropriate application fee as set forth below:

Transactions of 25 to 50 animals per year: one hundred and twenty-five dollars (\$125.00)

Transactions of 51 to 150 animals per year: two hundred and fifty dollars (\$250.00)

Transactions of 151 to 300 animals per year: five hundred dollars (\$500.00)

Transactions of 301 to 500 animals per year: seven hundred and fifty dollars (\$750.00)

Transactions of more than 500 animals per year: one thousand dollars (\$1,000.00)

- (2) The number of transactions used to determine the amount of fees under this section shall be the number of dogs and cats bought and sold during the last calendar year of the dealers operation. In the case of person who is a new applicant for a license and has no record for the past year shall make a reasonable estimate of the number of transactions for the first year of operation to determine the license fee for the first year.

Authority: T.C.A. §44-17-118.

0080-2-15-.04 CONDITIONS FOR GRANTING A LICENSE

The Department shall issue a license, renew a license or continue a license if the Department is satisfied that the applicant meets the following conditions:

- (1) Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the standards set forth in 9 CFR Part 3. Each applicant for an initial license or license renewal must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection during business hours and at other times mutually agreeable to the applicant and the Department, to ascertain the applicant's compliance with the standards and regulations.
- (2) In the case of an application for an initial license, the applicant must demonstrate compliance with the standards, as required in paragraph (a) of this section, before the Department will issue a license. If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this chapter, the Department will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. The applicant will have two more chances to demonstrate his or her compliance with the regulations and standards through re-inspection by the department.

If the applicant fails the third inspection he or she will forfeit the application fee and cannot re-apply for a license for a period of 6 months following the third inspection. Issuance of the license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all regulations and standards in this chapter.

Authority: T.C.A. §44-17-118.

0080-2-15-.05 DURATION OF LICENSE AND TERMINATION OF LICENSE

- (1) A license issued under this part shall be valid and effective unless:
 - (a) The license has been revoked or suspended.
 - (b) The license is voluntarily terminated upon request of the licensee, in writing, to the Department.
 - (c) The license has expired or been terminated under this part.
 - (d) The applicant has failed to pay the application fee and annual license fee as required by 0080-2-15-.03. There will be no refund if a license is terminated prior to its expiration date.

- (2) Any person who is licensed must file an application for a license renewal and an annual report as required, and pay the required fees, on or before the expiration date of the present license or the license shall expire and automatically terminate on its anniversary date. Failure to comply with the reporting requirements, or to pay the required license fees prior to the expiration date of the license, shall result in automatic termination of such license on the anniversary date of the license.
- (3) Any person who seeks the reinstatement of a license that has been automatically terminated must follow the procedure applicable to new applicants for a license.
- (4) Licenses are issued to specific persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location.
- (5) Any Person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.
- (6) Any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. Any person whose license has been suspended for any reason may apply to the Department, in writing, for reinstatement of his or her license.
- (7) Any person whose license has been revoked shall not be licensed in his or her own name or in other manner, nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.
- (8) Any person whose license has been suspended or revoked shall not buy, sell, transport or deliver for transport, any animal during the period of suspension or revocation.

Authority: T.C.A. §44-17-118.

0080-2-15-.06 DENIAL OF INITIAL LICENSE APPLICATION

- (1) A license will not be issued to any applicant who:
 - (a) Has not complied with the requirements of this chapter and has not paid the fees indicated in 0080-2-15-.03.
 - (b) Is not in compliance with the regulations and standards as set forth in 9 CFR Part 3.
 - (c) Has had a license revoked or whose license is suspended.
 - (d) Has been fined, sentenced to jail, or pled nolo contendere under state or local cruelty to animal laws within one year of application, except that if no penalty is imposed as a result of the plea of nolo contendere the applicant may reapply immediately; or
 - (e) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department.

- (2) An applicant whose license application has been denied may request a hearing in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. Title 4, Chapter 5, for the purpose of showing why the application for license should not be denied. The denial shall remain in effect until the final legal decision has been rendered. Should the denial be upheld, the applicant may again apply for a license one year from the date of the final order denying the application.

Authority: T.C.A. §44-17-118.

0080-2-15-.07 COMPLIANCE WITH STANDARDS.

Each Dealer licensed under this chapter shall comply in all respects with the regulations of this chapter and the standards set forth in Part 3 of Title 9 of Code of Federal Regulations as amended, for the humane, care, treatment, housing, and transportation of animals.

Authority: T.C.A. §44-17-118.

0080-2-15-.08 ACCESS AND INSPECTION OF RECORDS AND PROPERTY.

- (1) Each dealer shall furnish to the Department any information concerning the business of the dealer, which an official of the Department may request in connection with the enforcement of the provisions of the Act, these regulations and standards (9 CFR part 3). This information shall be furnished within a reasonable time and as may be specified in the request for information.
- (2) Each dealer shall during business hours allow Department officials:
 - (a) To enter its place of business;
 - (b) To examine records required to be kept by the Department and the Act;
 - (c) To make copies of the records;
 - (d) To inspect and photograph the facilities, property and animals, as department officials consider necessary to enforce the provisions of the Act, the regulations and the standards; and
 - (e) To document, by the taking of photographs and other means, conditions and areas of noncompliance.
- (3) The dealer shall extend to department officials use of a room, table or other facilities necessary for the proper examination of the records and inspection of the property or animals.

Authority: T.C.A. §44-17-118.

0080-2-15-.09 INSPECTION FOR MISSING ANIMALS

Each dealer shall allow, upon request and during business hours, officers of law enforcement agencies with general law enforcement authority to enter his or her place of business to inspect animals and records for the purpose of seeking animals that are missing, under the following conditions;

- (1) The law enforcement officers shall furnish to the dealer a written description of the missing animal and the name and address of its owner before making the search.
- (2) The law enforcement officers shall abide by all security measures required by the dealer to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

Authority: T.C.A. §44-17-118.

0080-2-15-.10 CONFISCATION AND DESTRUCTION OF ANIMALS

- (1) If an animal being held by a dealer is found by a Department official to be suffering as a result of the failure of the dealer to comply with any provision of the regulations or the standards set forth in this chapter, the department official shall make a reasonable effort to notify the dealer of the condition of the animal(s) and request that the condition be corrected and that adequate care be given to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer refuses to comply with this request, the department official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (2) of this section, if, in the opinion of the Department, the circumstances indicate the animal's health is in danger.
- (2) In the event that the Department official is unable to locate or notify the dealer, the department official shall contact a law enforcement agency to accompany him to the premises and shall arrange for adequate care when necessary to alleviate the animal's suffering at the dealer's expense. If in the opinion of the department, the condition of the animal(s) cannot be corrected by temporary care, the department official shall confiscate the animals.
- (3) Confiscated animals may be placed, by sale or donation, with other licensees or locations approved by the Department, which comply with the standards, and regulations and can provide proper care, or they may be euthanized. The dealer from whom the animals were confiscated shall bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

Authority: T.C.A. §44-17-118.

0080-2-15-.11 RECORDS

- (1) Each dealer shall keep and maintain records at each licensed location for each animal purchased, acquired, held, transported, sold or otherwise disposed of at that location. The records shall include the following:
 - (a) The name and address of the person from whom each animal was acquired.
 - (b) The date each animal was acquired.
 - (c) A description of each animal showing age, size, color marking, sex, breed, and vaccination information available. Records shall also include any other significant identification for each animal including and official tag number or tattoo.
 - (d) The name and address of the person to whom any animal is sold, given, bartered or to whom otherwise delivered. The record shall show the method of disposition.

- (2) The semi-annual reports required by T.C.A. § 44-17-108 are due at the department six months after the date the license is issued and at the annual renewal of the license.

Authority: T.C.A. §44-17-118.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2002. (10-57)

THE BOARD OF CHIROPRACTIC EXAMINERS - 0260

There will be a hearing before the Board of Chiropractic Examiners to consider the promulgation of a new rule and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-4-101, 63-4-106, 63-4-108, 63-4-111, 63-4-114, and 63-4-115. 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. (CST) on the 11th day of February, 2003.

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) 523-4397.

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

Jerry Kosten, Regulations Manager, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULE

NEW RULE

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0260-2-.24 Chiropractic Professional Corporations and Chiropractic Professional Limited Liability Companies

0260-2-.24 CHIROPRACTIC PROFESSIONAL CORPORATIONS AND CHIROPRACTIC PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Chiropractic Professional Corporations (CPC) – Except as provided in this rule Chiropractic Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.

- (a) Filings – A CPC need not file its Charter or its Annual Statement of Qualifications with the Board.
- (b) Ownership of Stock – Only the following may form and own shares of stock in a CPC:
 - 1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or
 - 2. A general partnership in which all partners are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or
 - 3. A CPC in which all shareholders are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or
 - 4. A Chiropractic Professional Limited Liability Company (CPLLC) in which all members are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or
 - 5. A foreign CPC or CPLLC in which all shareholders/members are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.
- (c) Officers and Directors of Chiropractic Professional Corporations
 - 1. All, except the following officers, must be chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 - 2. With respect to members of the Board of Directors, only chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 shall be directors of a CPC.
- (d) Corporate Practice Limitations
 - 1. Engaging in, or allowing another chiropractic physician incorporator, shareholder, officer, or director, while acting on behalf of the CPC, to engage in, chiropractic practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 0260-2-.13 and/or either Tennessee Code Annotated, Sections 63-4-114 (1).

2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPC.
 3. Nothing in these rules shall be construed as prohibiting a CPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician incorporators, directors, officers, shareholders, employees or contractors of the CPC who are practicing chiropractic as defined by Tennessee Code Annotated § 63-4-101.
 4. Nothing in these rules shall be construed as prohibiting a chiropractic physician from owning shares of stock in any type of professional corporation other than a CPC so long as such ownership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated § 63-4-101.
- (2) Chiropractic Professional Limited Liability Companies (CPLLC) - Except as provided in this rule Chiropractic Professional Limited Liability Companies shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 248.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership – Only the following may be members of a foreign or domestic CPLLC doing business in Tennessee:
 1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or
 2. A general partnership in which all partners are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or
 3. A CPC in which all shareholders are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or
 4. A Chiropractic Professional Limited Liability Company (CPLLC) in which all members are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians; and/or
 5. A foreign CPC or CPLLC in which all shareholders/members are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.
 - (c) Managers or Governors of a CPLLC

1. All, except the following managers, must be chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4:
 - (i) Secretary
 - (ii) Treasurer
 2. Only chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 shall be serve on the Board of Governors of a CPLLC.
- (d) Practice Limitations
1. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPLLC.
 2. Nothing in these rules shall be construed as prohibiting a CPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician members, governors, officers, employees or contractors of the CPC who are practicing chiropractic as defined by Tennessee Code Annotated § 63-4-101.
 3. Nothing in these rules shall be construed as prohibiting a chiropractic physician from being members of any type of professional limited liability company other than a CPLLC so long as such membership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.
 4. All CPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 to provide services only in states other then Tennessee shall annually file with the Board a notarized statement that it is not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a CPC or a CPLLC has violated or is violating any provision of Title 48 Chapters 101 and/or 248 shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Section, 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the CPC and/or CPLLC or the secretary of state if one of the events described in Tennessee Code Annotated, Section 48-208-104 or a violation of the provisions of Tennessee Code Annotated, Title 48, Chapter 248 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the CPC and/or CPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.

- (d) The notice of violation shall state that, if the Board finds that the CPC and/or CPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48, Chapter, Part 9
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provision of the Uniform Administrative Procedures Act, compiled in Title 4, chapter 5 but that the CPC and/or CPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the it is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a CPC and/or CPLLC did violate any provision of title 48, chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board’s satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)–(3) and/or 248-409 (1)-(3).
- (4) Violation of this rule by any chiropractic physician individually or collectively while acting as a CPC or as a CPLLC may subject the chiropractic physician(s) to disciplinary action pursuant to Tennessee Code Annotated, Section 63-4-114 (4).

Authority: T.C.A. §§4-5-202, 4-5-204, 48-101-605, 48-101- 608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-4-106, 63-4-108, 63-4-111, 63-4-114, and 63-4-115.

REPEALS

- 0260-4-1-.01 Purpose, is repealed.
- 0260-4-1-.02 Definitions, is repealed.
- 0260-4-1-.03 Coverage and Scope of Act, is repealed.
- 0260-4-1-.04 Ownership of C.P.C. Shares, is repealed.
- 0260-4-1-.05 Requirements as to Form of Corporate Charter, is repealed.
- 0260-4-1-.06 Filing of Charter, is repealed.
- 0260-4-1-.07 Corporate Practice Limitations, is repealed.
- 0260-4-1-.08 Practice Beyond Scope of Charter, is repealed.
- 0260-4-1-.09 Prohibition on Chiropractors Combining with Other Professions, is repealed.
- 0260-4-1-.10 Ethical Prohibition on Chiropractor’s Ownership of a Non-C.P.C., is repealed.
- 0260-4-1-.11 Corporate Name, is repealed.
- 0260-4-1-.12 Officers and Directors, is repealed.
- 0260-4-1-.13 Requirements as to Form of Stock Certificate, is repealed.
- 0260-4-1-.14 Offering of C.P.C. Shares Prohibited, is repealed.
- 0260-4-1-.15 Regulation of C.P.C. Shares by the Board, is repealed.
- 0260-4-1-.16 Filing of Annual Statement of Qualifications, is repealed.
- 0260-4-1-.17 Termination of C.P.C. Status, is repealed.

- 0260-4-2-.01 Purpose, is repealed.
- 0260-4-2-.02 Definitions, is repealed.
- 0260-4-2-.03 Coverage and Scope of Rules, is repealed.
- 0260-4-2-.04 Membership in CLLC'S, is repealed.
- 0260-4-2-.05 Persons Permitted to be Managers or Governors, is repealed.
- 0260-4-2-.06 Dissolution, is repealed.
- 0260-4-2-.07 Foreign CLLC'S, is repealed.
- 0260-4-2-.08 Delivery of Articles, is repealed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of October, 2002. (10-42)

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

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Marion County Juvenile Court Building, 106 Academy Avenue, Jasper, TN 37347 on December 19th, 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 REMEDIAL ACTION**

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Marion County (58)	
58-504	Scratch Ankle Road Dump Whiteside, 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 23rd day of October, 2002. (10-29)

**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 16th day of December 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

Paragraph (111) of proposed rulemaking hearing rule 1200-13-13-.01 Definitions is being amended by adding the sentence "For purposes of the Medicaid eligibility category of women under 65 requiring treatment for breast or cervical cancer, 'Uninsured' shall mean any person who does not have health insurance or access to health insurance which covers treatment for breast or cervical cancer" so as amended paragraph (111) shall read as follows:

(111) UNINSURED shall mean any person who does not have health insurance directly or indirectly through another family member, or who does not have access to group health insurance. For purposes of the Medicaid eligibility category of women under 65 requiring treatment for breast or cervical cancer,

“Uninsured” shall mean any person who does not have health insurance or access to health insurance which covers treatment for breast or cervical cancer.

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 31st day of October, 2002. (10-54)

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 16th day of December 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

Paragraph (111) of proposed rulemaking hearing rule 1200-13-14-.01 Definitions is being amended by adding the sentence “For purposes of the Medicaid eligibility category of women under 65 requiring treatment for breast or cervical cancer, ‘Uninsured’ shall mean any person who does not have health insurance or access to health insurance which covers treatment for breast or cervical cancer” so as amended paragraph (111) shall read as follows:

(111) UNINSURED shall mean any person who does not have health insurance directly or indirectly through another family member, or who does not have access to group health insurance. For purposes of the Medicaid eligibility category of women under 65 requiring treatment for breast or cervical cancer, “Uninsured” shall mean any person who does not have health insurance or access to health insurance which covers treatment for breast or cervical cancer.

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 31st day of October, 2002. (10-55)

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

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104 and 68-29-105, 68-29-111, 68-29-116, and Public Chapter 588 of the Public Acts of 2002. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 7th day of January, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-1-.20 Qualifications and Duties of the Medical Laboratory Director, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) Be a physician licensed in Tennessee and certified in anatomic or clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or possesses qualifications which are equivalent to those required for such certification (Board eligible). Those qualifying as "Board eligible" must become Board certified within three (3) years of assuming directorship.
 1. The director of an anatomic laboratory must be certified or be "Board eligible" in anatomic pathology.
 2. The director of a clinical laboratory must be certified or be "Board eligible" in clinical pathology.

3. The director of a laboratory that conducts anatomic and clinical pathology must be certified or be "Board eligible" in anatomic and clinical pathology.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-103, 68-29-105, 68-29-111, and 68-29-116.

Rule 1200-6-3-.01 Definitions, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Anatomic laboratory – Any medical laboratory performing only the biophysical examination of specimens pertaining to the clinical specialty of pathology, to include histopathology, oral pathology, and cytopathology. The examination of these specimens taken from the human body are performed to obtain information for diagnosis, prophylaxis, or treatment or where any examination, determination or test is made of any sample used as a basis for health advice, or where any sample is collected for the purpose of transfusion or processing of blood or blood fractions, or the training of medical laboratory personnel. Compliance with Rule 1200-6-1-.20 is required to be the director of an anatomic laboratory.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, 68-29-111, and 68-29-116.

Rule 1200-6-3-.16 Alternate Site Testing, is amended by deleting paragraph (3) but not its parts and substituting instead the following language, and is further amended by deleting parts (3) (c) 5. and (3) (c) 7., and subparagraphs (3) (d) and (3) (e) in their entirety and substituting instead the following language, so that as amended, the new paragraph (3) but not its parts, the new parts (3) (c) 5. and (3) (c) 7., and the new subparagraphs (3) (d) and (3) (e) shall read:

- (3) Screening Programs - Screening programs conducted by for-profit hospitals or nonprofit organizations are exempt from the licensure requirements of the Medical Laboratory Act, pursuant to T.C.A. § 68-29-104(6), when the following conditions are met:
 - (3) (c) 5. Name and address of the for-profit hospital or nonprofit organization conducting the screening.
 - (3) (c) 7. Assurance that the for-profit hospital or nonprofit organization is in compliance with Rule 1200-6-3-.11 regarding the handling of infectious and hazardous waste.
 - (3) (d) A copy of the written notification submitted to the Administrative office must be retained by the for-profit hospital or nonprofit organization conducting the screening program and must be available for inspection at the site of the screening program.
 - (3) (e) Notification of screening is not required when the for-profit hospital or nonprofit organization is a licensed medical laboratory, provided the laboratory has complied with Rules 1200-6-3-.17 regarding the performance of waived testing and 1200-6-3-.16 regarding point of care testing.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104 and 68-29-105, and Public Chapter 588 of the Public Acts of 2002.

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of October, 2002. (10-17)

**DEPARTMENT OF HEALTH - 1200
BOARD FOR LICENSING 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 a.m. (CST) on the 18th day of December, 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, visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or 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

**CHAPTER 1200-8-1
STANDARDS FOR HOSPITALS**

AMENDMENTS

Rule 1200-8-1-.07, Optional Hospital Services, is amended by adding the following language as new paragraph (13):

- (13) Perinatal and/or Neonatal Care Services. Any hospital providing perinatal and/or neonatal care services shall comply with the Tennessee Perinatal Care System Guidelines for Regionalization, Hospital Care Levels, Staffing and Facilities developed by the Tennessee Department of Health's Perinatal Advisory Committee, June 1997 including amendments as necessary.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2002. (10-56)

**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 a.m. (CST) on the 16th day of December, 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 visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or 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

**CHAPTER 1200-8-1
STANDARDS FOR HOSPITALS**

**CHAPTER 1200-8-6
STANDARDS FOR NURSING HOMES**

**CHAPTER 1200-8-10
STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS**

**CHAPTER 1200-8-11
STANDARDS FOR HOMES FOR THE AGED**

**CHAPTER 1200-8-15
STANDARDS FOR RESIDENTIAL HOSPICE**

**CHAPTER 1200-8-17
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL
REHABILITATION TREATMENT FACILITIES**

AMENDMENTS

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (27) in its entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraph (27) and the four (4), new, appropriately numbered paragraphs shall read:

- (27) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
- (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-1-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-1-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-1-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each hospital shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The hospital must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.

- (2) The hospital should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.
- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
 - (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.

- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The hospital must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
 - (b) Permit the patient to obtain another physician.
- (10) Each hospital shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-1-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-6-.01, Definitions, is amended by deleting paragraphs (15) and (18) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (15) and (18) and the four (4), new, appropriately numbered paragraphs shall read:

- (15) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (18) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.

- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.

- () Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-6-.13 or T.C.A. §33-3-220.

- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-6-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-6-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each nursing home shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. The policies and procedures for determining when resuscitative services may be withheld must respect the resident's rights of self-determination. The nursing home must inform the resident and/or the resident's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.

- (2) The nursing home should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a resident who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.

- (3) Health care decisions made by a health care decision-maker must be made in accord with the resident's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the resident's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the resident's desires or best interests in light of the personal values and beliefs of the resident to the extent they are known.
- (4) In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf.
 - (a) The resident's surrogate shall be an adult who:
 1. has exhibited special care and concern for the resident, who is familiar with the resident's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the resident's spouse,
 - (ii) the resident's adult child,
 - (iii) the resident's parent,
 - (iv) the resident's adult sibling,
 - (v) any other adult relative of the resident, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
 - (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the resident's treating physician may make health care decisions for the resident after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the resident's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All residents shall be presumed as having consented to CPR unless there is documentation in the medical record that the resident has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent resident who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a resident who lacks

decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf, and reflect that the resident's surrogate and the resident's treating physician have mutually specified that a DNR order be written.

- (7) CPR may be withheld from the resident if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The nursing home must have procedures for allowing revocation or amending DNR orders by the resident, the resident's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the resident or the resident's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the resident to another physician who will honor the DNR order; and,
 - (b) Permit the resident to obtain another physician.
- (10) Each nursing home shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-6-.13, the Board will take no regulatory actions against them.

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.

Rule 1200-8-10-.01, Definitions, is amended by deleting paragraph (16) in its entirety and substituting instead the following language, and is further amended by adding the following language as five (5), new, appropriately numbered paragraphs, so that as amended, the new paragraph (16) and the five (5), new, appropriately numbered paragraphs shall read:

- (16) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;

- (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient’s health care decision-maker is one of the following: the patient’s health care agent as specified in an advance directive, the patient’s court-appointed legal guardian or conservator with health care decision-making authority, or the patient’s surrogate as determined pursuant to Rule 1200-8-10-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).
- () Legal Guardian. Any person authorized to act for the patient pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

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

Rule 1200-8-10-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-10-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each ambulatory surgical treatment center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient’s rights of self-determination. The ambulatory surgical treatment center must inform the patient and/or the patient’s health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The ambulatory surgical treatment center should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient’s individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient’s specific wishes are not known, decisions are to be made in accord with the health care decision-maker’s determination of the patient’s desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.

- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
- (a) The patient's surrogate shall be an adult who:
1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.

- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The ambulatory surgical treatment center must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
 - (b) Permit the patient to obtain another physician.
- (10) Each ambulatory surgical treatment center shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-10-13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-11-.01, Definitions, is amended by deleting paragraph (16) in its entirety and substituting instead the following language, and is further amended by adding the following language as five (5), new, appropriately numbered paragraphs, so that as amended, the new paragraph (16) and the five (5), new, appropriately numbered paragraphs shall read:

- (16) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.

- () Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-11-.12 or T.C.A. §33-3-220.
- () Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-11-.12, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-11-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each home for the aged shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. The policies and procedures for determining when resuscitative services may be withheld must respect the resident's rights of self-determination. The home for the aged must inform the resident and/or the resident's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The home for the aged should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a resident who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the resident's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the resident's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the resident's desires or best interests in light of the personal values and beliefs of the resident to the extent they are known.
- (4) In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf.

- (a) The resident's surrogate shall be an adult who:
 - 1. has exhibited special care and concern for the resident, who is familiar with the resident's personal values, and who is reasonably available; and
 - 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the resident's spouse,
 - (ii) the resident's adult child,
 - (iii) the resident's parent,
 - (iv) the resident's adult sibling,
 - (v) any other adult relative of the resident, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the resident's treating physician may make health care decisions for the resident after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the resident's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All residents shall be presumed as having consented to CPR unless there is documentation in the medical record that the resident has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent resident who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf, and reflect that the resident's surrogate and the resident's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the resident if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.

- (8) Procedures for periodic review of DNR orders must be established and maintained. The home for the aged must have procedures for allowing revocation or amending DNR orders by the resident, the resident's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the resident or the resident's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the resident to another physician who will honor the DNR order; and,
 - (b) Permit the resident to obtain another physician.
- (10) Each home for the aged shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-11-.12, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraphs (22) and (25) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (22) and (25) and the four (4), new, appropriately numbered paragraphs shall read:

- (22) Incompetent. A patient or resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (25) Legal Guardian. Any person authorized to act for the patient or resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.

- () Health Care Decision-maker. In the case of an incompetent patient or resident, or a patient or resident who lacks decision-making capacity, the patient's or resident's health care decision-maker is one of the following: the patient's or resident's health care agent as specified in an advance directive, the patient's or resident's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's or resident's surrogate as determined pursuant to Rule 1200-8-15-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (d) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (e) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (f) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-15-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients or Residents, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential hospice shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient or resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients or residents. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's or resident's rights of self-determination. The residential hospice must inform the patient or resident and/or the patient's or resident's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The residential hospice should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient or resident who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's or resident's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's or resident's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's or resident's desires or best interests in light of the personal values and beliefs of the patient or resident to the extent they are known.
- (4) In the case of a patient or resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's or resident's surrogate to make health care decisions on the patient's or resident's behalf.
 - (a) The patient's or resident's surrogate shall be an adult who:

1. has exhibited special care and concern for the patient or resident, who is familiar with the patient's or resident's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's or resident's spouse,
 - (ii) the patient's or resident's adult child,
 - (iii) the patient's or resident's parent,
 - (iv) the patient's or resident's adult sibling,
 - (v) any other adult relative of the patient or resident, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's or resident's treating physician may make health care decisions for the patient or resident after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's or resident's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients or residents shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient or resident has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
 - (6) In the case of an incompetent patient or resident who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient or resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's or resident's surrogate to make health care decisions on the patient's or resident's behalf, and reflect that the patient's or resident's surrogate and the patient's or resident's treating physician have mutually specified that a DNR order be written.
 - (7) CPR may be withheld from the patient or resident if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
 - (8) Procedures for periodic review of DNR orders must be established and maintained. The residential hospice must have procedures for allowing revocation or amending DNR orders by the patient or resident, the patient's or resident's health care decision-maker, or treating physician. Such change shall be documented in the medical record.

- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or resident or the patient's or resident's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the patient or resident to another physician who will honor the DNR order; and,
 - (b) Permit the patient or resident to obtain another physician.
- (10) Each residential hospice shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-15-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-17-.01, Definitions, is amended by deleting paragraphs (27) and (28) in their entirety, and is further amended by adding the following language as six (6), new, appropriately numbered paragraphs, so that as amended, the six (6), new, appropriately numbered paragraphs shall read:

- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent client, or a client who lacks decision-making capacity, the client's health care decision-maker is one of the following: the client's health care agent as specified in an advance directive, the client's court-appointed legal guardian or conservator with health care decision-making authority, or the client's surrogate as determined pursuant to Rule 1200-8-17-.12 or T.C.A. §33-3-220.
- () Incompetent. A client who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:

- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).
- () Legal Guardian. Any person authorized to act for the client pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

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

Rule 1200-8-17-.12, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-17-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Clients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential rehabilitation treatment center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a client who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual clients. The policies and procedures for determining when resuscitative services may be withheld must respect the client's rights of self-determination. The residential rehabilitation treatment center must inform the client and/or the client's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The residential rehabilitation treatment center should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a client who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the client's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the client's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the client's desires or best interests in light of the personal values and beliefs of the client to the extent they are known.
- (4) In the case of a client who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the client's surrogate to make health care decisions on the client's behalf.
 - (a) The client's surrogate shall be an adult who:
 - 1. has exhibited special care and concern for the client, who is familiar with the client's personal values, and who is reasonably available; and
 - 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the client's spouse,

- (ii) the client's adult child,
 - (iii) the client's parent,
 - (iv) the client's adult sibling,
 - (v) any other adult relative of the client, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the client's treating physician may make health care decisions for the client after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the client's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All clients shall be presumed as having consented to CPR unless there is documentation in the medical record that the client has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent client who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a client who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the client's surrogate to make health care decisions on the client's behalf, and reflect that the client's surrogate and the client's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the client if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The residential rehabilitation treatment center must have procedures for allowing revocation or amending DNR orders by the client, the client's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the client or the client's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the client to another physician who will honor the DNR order; and,
 - (b) Permit the client to obtain another physician.

- (10) Each residential rehabilitation treatment center shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-17-.12, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2002. (10-45)

**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 a.m. (CST) on the 16th day of December, 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 visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or 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

**CHAPTER 1200-8-23
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL
DETOXIFICATION TREATMENT FACILITIES**

**CHAPTER 1200-8-24
STANDARDS FOR BIRTHING CENTERS**

**CHAPTER 1200-8-25
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES**

**CHAPTER 1200-8-26
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING
HOME HEALTH SERVICES**

**CHAPTER 1200-8-27
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOSPICE SERVICES**

**CHAPTER 1200-8-28
STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES**

AMENDMENTS

Rule 1200-8-23-.01, Definitions, is amended by deleting paragraphs (27) and (29) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (27) and (29) and the four (4), new, appropriately numbered paragraphs shall read:

- (27) Incompetent. A client who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (29) Legal Guardian. Any person authorized to act for the client pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent client, or a client who lacks decision-making capacity, the client's health care decision-maker is one of the following: the client's health care agent as specified in an advance directive, the client's court-appointed legal guardian or conservator with health care decision-making authority, or the client's surrogate as determined pursuant to Rule 1200-8-23-.12 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:

- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
- (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
- (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-23-.12, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-23-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Clients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential detoxification treatment center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a client who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual clients. The policies and procedures for determining when resuscitative services may be withheld must respect the client's rights of self-determination. The residential detoxification treatment center must inform the client and/or the client's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The residential detoxification treatment center should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a client who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the client's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the client's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the client's desires or best interests in light of the personal values and beliefs of the client to the extent they are known.
- (4) In the case of a client who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the client's surrogate to make health care decisions on the client's behalf.
 - (a) The client's surrogate shall be an adult who:
 - 1. has exhibited special care and concern for the client, who is familiar with the client's personal values, and who is reasonably available; and
 - 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the client's spouse,
 - (ii) the client's adult child,

- (iii) the client's parent,
 - (iv) the client's adult sibling,
 - (v) any other adult relative of the client, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the client's treating physician may make health care decisions for the client after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the client's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All clients shall be presumed as having consented to CPR unless there is documentation in the medical record that the client has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent client who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a client who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the client's surrogate to make health care decisions on the client's behalf, and reflect that the client's surrogate and the client's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the client if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The residential detoxification treatment center must have procedures for allowing revocation or amending DNR orders by the client, the client's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the client or the client's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the client to another physician who will honor the DNR order; and,
 - (b) Permit the client to obtain another physician.

- (10) Each residential detoxification treatment center shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-23-.12, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-24-.01, Definitions, is amended by deleting paragraphs (13) and (15) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (13) and (15) and the four (4), new, appropriately numbered paragraphs shall read:

- (13) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (15) Legal Guardian. Any person authorized to act for the patient pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-24-.12 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-24-.12, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-24-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each birthing center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The birthing center must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The birthing center should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.
- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.

- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The birthing center must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
- (b) Permit the patient to obtain another physician.
- (10) Each birthing center shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-24-.12, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraphs (21) and (24) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (21) and (24) and the four (4), new, appropriately numbered paragraphs shall read:

- (21) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (24) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-25-.12 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-25-.12, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-25-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each assisted-care living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. The policies and procedures for determining when resuscitative services may be withheld must respect the resident's rights of self-determination. The assisted-care living facility must inform the resident and/or the resident's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The assisted-care living facility should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a resident who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the resident's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the resident's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the resident's desires or best interests in light of the personal values and beliefs of the resident to the extent they are known.
- (4) In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf.
 - (a) The resident's surrogate shall be an adult who:
 1. has exhibited special care and concern for the resident, who is familiar with the resident's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the resident's spouse,
 - (ii) the resident's adult child,
 - (iii) the resident's parent,
 - (iv) the resident's adult sibling,
 - (v) any other adult relative of the resident, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
 - (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the resident's treating physician may make health care decisions for the resident after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the resident's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee"

means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.

- (5) All residents shall be presumed as having consented to CPR unless there is documentation in the medical record that the resident has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent resident who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf, and reflect that the resident's surrogate and the resident's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the resident if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The assisted-care living facility must have procedures for allowing revocation or amending DNR orders by the resident, the resident's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the resident or the resident's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the resident to another physician who will honor the DNR order; and,
 - (b) Permit the resident to obtain another physician.
- (10) Each assisted-care living facility shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-25-.12, the Board will take no regulatory actions against them.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.*

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraphs (18) and (20) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (18) and (20) and the four (4), new, appropriately numbered paragraphs shall read:

- (18) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

- (20) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
- (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-26-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-26-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-26-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each home health agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The home health agency must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.

- (2) The home health agency should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.
- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
 - (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.

- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The home for the aged must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
 - (b) Permit the patient to obtain another physician.
- (10) Each home for the aged shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-26-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-27-.01, Definitions, is amended by deleting paragraphs (19) and (21) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (19) and (21) and the four (4), new, appropriately numbered paragraphs shall read:

- (19) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (21) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:

- (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-27-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-27-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-27-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each hospice agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The hospice agency must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The hospice agency should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health

care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.

- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
 - (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to

make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.

- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The hospice agency must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
 - (b) Permit the patient to obtain another physician.
- (10) Each hospice agency shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-27-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-28-.01, Definitions, is amended by deleting paragraphs (18) and (21) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (18) and (21) and the four (4), new, appropriately numbered paragraphs shall read:

- (18) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (21) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;

- (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-28-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-28-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-28-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each HIV supportive living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. The policies and procedures for determining when resuscitative services may be withheld must respect the resident's rights of self-determination. The HIV supportive living facility must inform the resident and/or the resident's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The HIV supportive living facility should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a resident who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the resident's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the resident's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the resident's desires or best interests in light of the personal values and beliefs of the resident to the extent they are known.
- (4) In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian

or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf.

- (a) The resident's surrogate shall be an adult who:
1. has exhibited special care and concern for the resident, who is familiar with the resident's personal values, and who is reasonably available; and
 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the resident's spouse,
 - (ii) the resident's adult child,
 - (iii) the resident's parent,
 - (iv) the resident's adult sibling,
 - (v) any other adult relative of the resident, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the resident's treating physician may make health care decisions for the resident after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the resident's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All residents shall be presumed as having consented to CPR unless there is documentation in the medical record that the resident has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent resident who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a resident who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the resident's surrogate to make health care decisions on the resident's behalf, and reflect that the resident's surrogate and the resident's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the resident if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.

- (8) Procedures for periodic review of DNR orders must be established and maintained. The HIV supportive living facility must have procedures for allowing revocation or amending DNR orders by the resident, the resident's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the resident or the resident's health care decision-maker of this decision. The treating physician shall then:
 - (a) Make a good faith attempt to transfer the resident to another physician who will honor the DNR order; and,
 - (b) Permit the resident to obtain another physician.
- (10) Each HIV supportive living facility shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-28-.13, the Board will take no regulatory actions against them.

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 31st day of October, 2002.
(10-44)

**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 a.m. (CST) on the 16th day of December, 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 visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or 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

CHAPTER 1200-8-29

STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT

CHAPTER 1200-8-32

STANDARDS FOR END STAGE RENAL DISEASE CLINICS

AMENDMENTS

Rule 1200-8-29-.01, Definitions, is amended by deleting paragraph (16) in its entirety and substituting instead the following language, and is further amended by adding the following language as five (5), new, appropriately numbered paragraphs, so that as amended, the new paragraph (16) and the five (5), new, appropriately numbered paragraphs shall read:

- (16) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-29-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:

- (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);
 - (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
 - (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).
- () Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

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

Rule 1200-8-29-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-29-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each home medical equipment agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The home medical equipment agency must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The home medical equipment agency should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.
- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 - 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 - 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,

- (ii) the patient's adult child,
 - (iii) the patient's parent,
 - (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The home medical equipment agency must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,

- (b) Permit the patient to obtain another physician.
- (10) Each home medical equipment agency shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.
- (11) If health care facilities comply in good faith with this Rule 1200-8-29-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

Rule 1200-8-32-.01, Definitions, is amended by deleting paragraphs (20) and (22) in their entirety and substituting instead the following language, and is further amended by adding the following language as four (4), new, appropriately numbered paragraphs, so that as amended, the new paragraphs (20) and (22) and the four (4), new, appropriately numbered paragraphs shall read:

- (20) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (22) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- () Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.
- () Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:
 - (a) the selection and discharge of health-care providers and institutions;
 - (b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;
 - (c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (d) transfer to other health care facilities.
- () Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-32-.13 or T.C.A. §33-3-220.
- () Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:
 - (a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);

- (b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and
- (c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

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

Rule 1200-8-32-.13, Procedures for the Withholding of Resuscitative Services, is amended by deleting the rule in its entirety and renaming the rule 1200-8-32-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each end stage renal disease clinic shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. The policies and procedures for determining when resuscitative services may be withheld must respect the patient's rights of self-determination. The end stage renal disease clinic must inform the patient and/or the patient's health care decision-maker of these policies and procedures upon admission or at such time as may be appropriate.
- (2) The end stage renal disease clinic should identify, after consultation with the family or responsible party, the name of the health care decision-maker for a patient who is incompetent or who lacks decision-making capacity, who will be responsible, along with the treating physician, for making health care decisions, including but not limited to deciding on the issuance of a DNR order.
- (3) Health care decisions made by a health care decision-maker must be made in accord with the patient's individual health care instructions, if any, and other wishes to the extent known to the health care decision-maker. If the patient's specific wishes are not known, decisions are to be made in accord with the health care decision-maker's determination of the patient's desires or best interests in light of the personal values and beliefs of the patient to the extent they are known.
- (4) In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf.
 - (a) The patient's surrogate shall be an adult who:
 - 1. has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available; and
 - 2. consideration shall if possible be given in order of descending preference for service as a surrogate to:
 - (i) the patient's spouse,
 - (ii) the patient's adult child,
 - (iii) the patient's parent,

- (iv) the patient's adult sibling,
 - (v) any other adult relative of the patient, or
 - (vi) any other adult who satisfies the requirement under part 1 above.
- (b) If none of the individuals eligible to act as a surrogate under subparagraph (a), is reasonably available, the patient's treating physician may make health care decisions for the patient after the treating physician either (i) consults with and obtains the recommendations of an institutional ethics committee, or (ii) consults with a second physician who (A) is not directly involved in the patient's health care; (B) either (i) does not serve in a capacity of decision-making or influence or responsibility over the treating physician, or (ii) for whom the treating physician does not exert decision-making, influence or responsibility; and (C) concurs with the treating physician's decision. For the purposes of this rule, "institutional ethics committee" means a committee of a licensed health care institution which renders advice concerning ethical issues involving health care.
- (5) All patients shall be presumed as having consented to CPR unless there is documentation in the medical record that the patient has specified that a DNR order be written. DNR orders may be written to exclude any portion of the CPR measures deemed to be unacceptable.
- (6) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive or who has a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must reflect that the attorney in fact, guardian or conservator has specified that a DNR order be written. In the case of a patient who lacks decision-making capacity and who has not appointed an individual to act on his or her behalf pursuant to an advance directive and who does not have a court-appointed guardian or conservator with health care decision-making authority, documentation in the medical record must identify the patient's surrogate to make health care decisions on the patient's behalf, and reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (7) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations.
- (8) Procedures for periodic review of DNR orders must be established and maintained. The end stage renal disease clinic must have procedures for allowing revocation or amending DNR orders by the patient, the patient's health care decision-maker, or treating physician. Such change shall be documented in the medical record.
- (9) Any treating physician who refuses to enter a DNR order in accordance with provisions set forth above, or to comply with a DNR order, shall promptly advise the patient or the patient's health care decision-maker of this decision. The treating physician shall then:
- (a) Make a good faith attempt to transfer the patient to another physician who will honor the DNR order; and,
 - (b) Permit the patient to obtain another physician.
- (10) Each end stage renal disease clinic shall establish, and set forth in writing, a mediation process to deal with any dispute regarding health care decisions, including DNR orders, or the determination of the health care decision-maker.

- (11) If health care facilities comply in good faith with this Rule 1200-8-32-.13, the Board will take no regulatory actions against them.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of October, 2002. (10-43)

DEPARTMENT OF HEALTH - 1200

DEPARTMENT OF COMMERCE AND INSURANCE - 0780

There will be a hearing before the Department of Health, Division of Health Care Facilities, to consider the promulgation of new rules pursuant to T.C.A. §§4-5-202, 4-5-204, 56-32-218, and 68-1-103. 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 Tennessee Room on the ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CST) on the 17th day of December, 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, visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or 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.

SUMMARY OF PROPOSED RULES

CHAPTER 1200-8-33

STANDARDS FOR QUALITY OF CARE FOR HEALTH MAINTENANCE ORGANIZATIONS

The Health Maintenance Organization Act of 1986 (T.C.A. §§56-32-201 through 56-32-225) requires each health maintenance organization to obtain a Certificate of Authority to operate in Tennessee. The Tennessee Department of Commerce and Insurance is the agency responsible for issuing Certificates of Authority to health maintenance organizations and has the authority to revoke or suspend Certificates of Authority under this act.

Pursuant to this Act, the Tennessee Department of Health has the responsibility to determine that applicants for a Certificate of Authority are capable of providing basic health care services efficiently, effectively, and economically and that licensed health maintenance organizations continue to provide basic health care services efficiently, effectively, and economically.

NEW RULES

TABLE OF CONTENTS

1200-8-33-.01 Definitions	1200-8-33-.04 Surveys of Health Maintenance Organizations
1200-8-33-.02 Review of Certificate of Authority Applications	1200-8-33-.05 Reporting by Health Maintenance Organizations
1200-8-33-.03 Review of Service Area Expansion Requests	1200-8-33-.06S Standards for Health Maintenance Organizations

Rule 1200-8-33-.01 Definitions—This rule list thirteen (13) words with their definitions.

Authority: *T.C.A. §§4-5-202, 4-5-204, 56-32-203, 56-32-215, 56-32-218, and 68-1-103.*

Rule 1200-8-33-.02 Review of Certificate of Authority Applications—This rule requires a health maintenance organization that applies for a Certificate of Authority with the Department of Commerce and Insurance to submit documentation to the Tennessee Department of Health, Division of Health Care Facilities, that it meets, or will meet, the standards of the Department of Health. The review process by the Division of Health Care Facilities shall consist of a review of the medical management, quality improvement, utilization management, and other programs and a review of the network of hospitals, physicians, pharmacies, and other providers in the proposed service area. The health maintenance organization shall submit a list of contracting physicians, hospitals, pharmacies, and other providers, categorized by county, including the provider's name, location, and specialty. The network will be reviewed and an on-site visit will be scheduled to verify the signed contracts. When the review has been completed a letter shall be sent to the Department of Commerce and Insurance indicating whether or not the health maintenance organization's proposal meets the requirements of the Department of Health.

Authority: *T.C.A. §§4-5-202, 4-5-204, 56-32-203, 56-32-218, and 68-1-103.*

Rule 1200-8-33-.03 Review of Geographic Service Area Expansion Requests—This rule requires a health maintenance organization that applies for a service area expansion to submit the following information to the Department of Health, Division of Health Care Facilities: list of contracting physicians, hospitals, pharmacies, and other providers in the expanded geographic area; description of the medical management, quality improvement, and utilization management programs for the expanded service area; and any other information which the Department determines is needed to demonstrate the applicant's proof of capability to provide basic health care services efficiently, effectively, and economically. Also, the review process by the Division of Health Care Facilities shall consist of a review of the medical management, quality improvement, utilization management, and other programs and a review of the network of hospitals, physicians, pharmacies, and other providers in the expanded service area. The health maintenance organization shall submit a list of contracting physicians, hospitals, pharmacies, and other providers, categorized by county, including the provider's name, location, and specialty. The network will be reviewed and an on-site visit will be scheduled to verify the signed contracts. When the review has been completed a letter shall be sent to the Department of Commerce and Insurance indicating whether or not the health maintenance organization's proposal meets the requirements of the Department of Health.

Authority: *T.C.A. §§4-5-202, 4-5-204, 56-32-203, 56-32-218, and 68-1-103.*

Rule 1200-8-33-.04 Surveys of Health Maintenance Organizations—This rule states that the Department shall inspect health maintenance organizations periodically, but no less frequently than every three (3) years, and whenever necessary to respond to complaints from the public or whenever the Department determines that it is in the best interest of the public health and safety.

Authority: T.C.A. §§4-5-202, 4-5-204, 56-32-215, 56-32-218, and 68-1-103.

Rule 1200-8-33-.05 Reporting by Health Maintenance Organizations—This rule requires that a health maintenance organization shall notify the Tennessee Department of Health, Division of Health Care Facilities when operational sites are relocated or when separate or branch operational sites are established.

Authority: T.C.A. §§4-5-202, 4-5-204, 56-32-215, 56-32-218, and 68-1-103.

Rule 1200-8-33-.06 Standards for Health Maintenance Organizations—This rule requires that a health maintenance organization develop and implement the following standards: Quality Improvement Program, Utilization Management Program, Management Information System, Availability and Accessibility of Health Care, Member Services, Member Rights and Responsibilities, Member Information, Member Satisfaction, Complaints and Grievances, Health Promotion, Medical Director, Credentialing, Office and Medical Record Requirements, Confidentiality, Practice Guidelines, Provider Information, Physician Satisfaction, Enrollment of Employers and Members and Consumer Right-to-Know.

Authority: T.C.A. §§4-5-202, 4-5-204, 56-32-215, 56-32-218, 63-51-119, and 68-1-103.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of October, 2002. (10-41)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on Wednesday, December 18, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), 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 Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

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

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

**CHAPTER 1240-1-3
NON-FINANCIAL ELIGIBILITY REQUIREMENTS**

AMENDMENTS

Rule 1240-1-3-.43 Food Stamp Program Work Requirements, is amended by deleting the sentence following the period after the word "Dependents" in Paragraph (5) and by replacing the words "three (3) months" with the words "five (5) months" and inserting the word "eligibility" before the word "period" in Subparagraph (a), so that, as amended, Paragraph (5), Subparagraphs (a) through (d), shall read:

- (5) Special Requirements for Non-Exempt Able-Bodied Adults Without Dependents.
- (a) A household member who is otherwise eligible for food stamp benefits, who is at least 18 years of age but not yet 51 years of age, may not participate in the food stamp program if, during the preceding 36 month eligibility period, he/she received food stamps for at least five (5) months (separate or consecutive) during which he/she did not:
1. work at least 20 hours per week, averaged monthly;
 2. participate in and comply with the requirements of a work program approved by the Department, for at least 20 hours per week; such programs include:
 - (i) a program under the Job Training and Partnership Act;
 - (ii) a program under section 296 of the Trade Act of 1974;
 - (iii) an employment and training program operated by a state or political subdivision of the state and approved by the Governor, other than a job search or a job search training program.
 3. participate in and comply with the requirements of any state-established work-fare program that may be implemented.
- (b) The requirements in (5)(a) above shall not apply to an individual who is:
1. under 18 or over 50 years of age;
 2. medically certified as physically or mentally unfit for employment;
 3. a parent or other household member who has primary responsibility for the care of a dependent child;

4. a pregnant woman; or
5. has regained eligibility to participate in the food program, by during a 30-day period:
 - (i) working 80 or more hours;
 - (ii) participating in and complying with the requirements of a work program for 80 or more hours, as determined by the Department; or
 - (iii) participating in and complying with the requirements of any state-established work-fare program that may be implemented.
- (c) An individual who regains eligibility by meeting the requirements of (5)(b) above shall remain eligible as long as he/she continues to meet the requirements of (5)(a) above.
- (d) An individual who regained eligibility by meeting the requirements of (5)(b) above, but no longer meets the requirements under (5)(a) above is not eligible for any food stamp benefits in any household for more than a single consecutive 3-month period in any 36-month period.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(12), 71-5-304; 71-3-154(h); 7 USC § 2015(o); 7 CFR § 273.7; and 49 Federal Register 39036.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of October, 2002. (10-10)

**BOARD OF MEDICAL EXAMINERS - 0880
COMMITTEE FOR CLINICAL PERFUSIONISTS**

There will be a hearing before the Tennessee Board of Medical Examiners' Committee for Clinical Perfusionists to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-104, 63-28-109 63-28-114, and 63-28-118. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17th day of December, 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 Ave. North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 0880-11-.05 Licensure Process, is amended by deleting part (3) (a) 3. in its entirety and substituting instead the following language, and is further amended by deleting part (3) (a) 4. in its entirety, and is further amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new part (3) (a) 3. and the new subparagraph (3) (b) shall read:

- (3) (a) 3. Cause the certification issued pursuant to subparagraph (2) (g) to show that the licensure or certification in another state is current, active and is in good standing without any restriction or encumbrance.
- (3) (b) Pursuant to ABCP certification:
 - 1. Comply with all the requirements of paragraph (2) of this rule except subparagraphs (d) and (i); and
 - 2. Have the ABCP submit directly to the Committee's administrative office satisfactory evidence of current ABCP certification as a certified clinical perfusionist.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-104, 63-28-109, 63-28-114, and 63-28-118.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of October, 2002. (10-14)

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 repeal of Chapters 0940-5-18, (Crisis Stabilization Services) and 0940-5-16 (Mental Health Hospital Facilities), and the promulgation of new Chapters 0940-5-18 (Crisis Stabilization Services) and 0940-5-16 (Mental Health Hospital Facilities) in replacement thereof, 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 Cumberland Room, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee, at 1:00 p.m., central time on the 17th day of December, 2002.

Written comments will be considered if received by close of business, January 14, 2003, 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 entire text of this 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

SUMMARY OF PROPOSED RULES

CHAPTER 0940-5-18 CRISIS STABILIZATION

- 0940-5-18-.01 Definition
- 0940-5-18-.02 Application Of Rules For Mental Health Crisis Stabilization Services
- 0940-5-18-.03 Policies And Procedures
- 0940-5-18-.04 Personnel And Staffing Requirements
- 0940-5-18-.05 Individual Plan Of Care Requirements
- 0940-5-18-.06 Individual Record Requirements
- 0940-5-18-.07 Medication Administration
- 0940-5-18-.08 Storage Of Medications And Poisons
- 0940-5-18-.09 Disposition Of Unused Medications

CHAPTER 0940-5-16 HOSPITAL FACILITIES

- 0940-5-16-.01 Hospital Governance
- 0940-5-16-.02 Hospital Policies And Procedures
- 0940-5-16-.03 Hospital Personnel Requirements
- 0940-5-16-.04 Hospital Staffing Requirements
- 0940-5-16-.05 Hospital Service Recipient Rights
- 0940-5-16-.06 Hospital Admission and Discharge Policies And Procedures
- 0940-5-16-.07 Hospital Transfer Procedures
- 0940-5-16-.08 Hospital Service Recipient Records
- 0940-5-16-.09 Hospital Assessments
- 0940-5-16-.10 Hospital Individualized Treatment Plans
- 0940-5-16-.11 Hospital Medical Orders
- 0940-5-16-.12 Hospital Medication Administration

0940-5-16-.13	Use Of Isolation (Seclusion) Or Restraints In Hospitals
0940-5-16-.14	Use Of Physical Holding In Hospitals
0940-5-16-.15	Use Of Electroconvulsive Therapy
0940-5-16-.16	Use Of Psychosurgery
0940-5-16-.17	Hospital Emergency Services Requirements
0940-5-16-.18	Hospital Pharmacy Requirements
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0940-5-16-.20	Hospital Radiology Requirements
0940-5-16-.21	Hospital Infection Control
0940-5-16-.22	Hospital Central Sterile Supply And Control
0940-5-16-.23	Nutrition In Hospital Patient Care
0940-5-16-.24	Contracted Food Service Requirements For Hospitals
0940-5-16-.25	Hospital Food Service Personnel Requirements
0940-5-16-.26	Food Procurement In Hospitals
0940-5-16-.27	Food Protection In Hospitals
0940-5-16-.28	Hospital Food Service Equipment And Utensils
0940-5-16-.29	Hospital Food Service Plant Requirements
0940-5-16-.30	Hospital Laundry Plant Requirements
0940-5-16-.31	Hospital Laundry Management
0940-5-16-.32	Hospital Maintenance And Housekeeping Plant Requirements
0940-5-16-.33	Hospital Maintenance And Housekeeping Management

This notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2002. (10-39)

**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 repeal of Chapter 0940-5-19, (Mental Health Supportive Living Facility) and the promulgation of new Chapter 0940-5-19 (Mental Health Supportive Living Facility) in replacement thereof, pursuant to Tenn. Code Ann., Sections 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 Cumberland Room, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee, at 9:00 a.m., central time on the 17th day of December, 2002.

Written comments will be considered if received by close of business, January 14, 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 0940-5-19
MENTAL HEALTH SUPPORTIVE LIVING FACILITY**

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0940-5-19-.01 DEFINITION.

- (1) Mental Health Supportive Living Facility: a residential facility which collectively provides room, board, and personal care services to two (2) or more adult service recipients unrelated to the owner or operator of the facility. There is no time limit in this housing.

0940-5-19-.02 APPLICATION OF RULES FOR MENTAL HEALTH SUPPORTIVE LIVING FACILITY

- (1) The governing body of a supportive living facility must comply with the following rules:
 - (a) Rule 0940-5-4-.02 (2) Life Safety Board and Care Occupancy;

- (b) Chapter 0940-5-5 Adequacy of Facility Environment and Ancillary Services;
- (c) Chapter 0940-5-6 Minimum Program Requirements for All Mental Health Services (new rules to be filed); and
- (d) Chapter 0940-5-19 Minimum Program Requirements for Mental Health Supportive Living Facility.

0940-5-19-.03 POLICIES AND PROCEDURES FOR SUPPORTIVE LIVING FACILITIES.

- (1) The facility must maintain a written policies and procedures manual which contains the following elements:
 - (a) A policy and procedures which only allow the admission of service recipients who are:
 - 1. Able to care for basic self-help and minor health care needs with minimal assistance;
 - 2. Able to care for his/her own possessions and to maintain bedroom or living area in a reasonable state of orderliness and cleanliness;
 - 3. Able to recognize danger or threat to personal safety;
 - 4. Able to live comfortably within any limitations in the structure of the facility, and
 - 5. Generally able to maintain appropriate behaviors tolerable to the community.
 - (b) A policy and procedures which address the method for managing behavior that is not in keeping with the rules of the facility;
 - (c) A policy and procedures which state that physical holding must be implemented in a way that will minimize any physical harm to the service recipient and may only be used when the service recipient poses an immediate threat under the following conditions:
 - 1. The service recipient poses an immediate danger to self or others;
 - 2. To prevent the service recipient from causing substantial property damage; and
 - 3. May be used only until the service recipient is calm.
 - (d) The facility must identify ways in which service recipients can exercise freedom of choice within the facility. Ways in which service recipients can exercise personal freedoms include, but are not limited to, the following: meal planning, choice of roommate and daytime activity.

0940-5-19-.04 PERSONNEL AND STAFFING REQUIREMENTS FOR SUPPORTIVE LIVING FACILITIES.

- (1) The facility must provide adequate supervision by an adult who is knowledgeable of rules, policies, and procedures relevant to the facility's operation.

- (2) During normal waking hours, all facilities must provide at least one (1) direct-care staff person on-duty/on-site for every twelve (12) service recipients present in the facility. During normal sleeping hours, all facilities must provide at least one (1) direct-care staff person on-site in each building where service recipients are housed; and in any building housing more than twelve (12) service recipients, all facilities must provide one (1) additional, direct-care staff person on-duty/on-site for each additional twelve (12) service recipients.
- (3) Service recipients must not be left unattended in the facility at any time.
- (4) Facility staff must be provided with annual training relevant to the operation of a supportive living facility. Such training is to be provided by the agencies or individuals able to provide information relevant to the operation of the facility. The provision of training must be evidenced by documentation in the facility's records.

0940-5-19-.05 PROFESSIONAL SERVICES IN SUPPORTIVE LIVING FACILITIES.

- (1) Utilizing community resources, the facility must arrange access to qualified dental, medical, nursing, and pharmaceutical care for service recipients of the facility including care for emergencies on a twenty-four (24) hours per day and seven (7) days per week basis; the facility must allow service recipients or their families to have the option of choosing a personal professional for routine services.
- (2) The facility must provide, or procure for each service recipient, a physical examination, which includes routine screening and special studies as determined by the examining physician, within thirty (30) days of admission unless the service recipient has had a physical examination within twelve (12) months prior to admission. Subsequent physical examinations must be provided or procured as determined by the service recipient's examining physician. The documentation of required physical examinations must be provided in the service recipient's record and must include exact name of the examining physician, clinic, or hospital.
- (3) In consultation with the service recipient, the facility must refer each service recipient for on-going mental health services and assist the service recipient in keeping appointments and participating in treatment programs. Documentation of such referrals must be made in the service recipient's record.
- (4) Facility must assure access to emergency and non-emergency transportation needed by service recipients. When communication barriers apply, a facility staff person must accompany the service recipient to appointments to assure accurate information is communicated to the treatment provider.

0940-5-19-.06 RECORD REQUIREMENTS FOR SUPPORTIVE LIVING FACILITIES.

- (1) The record maintained for each service recipient must contain the following information:
 - (a) Legal competency status;
 - (b) Source of financial support and financial arrangements for residing in the facility. This information must be updated when the service recipient's financial status changes;
 - (c) Name, address, and telephone number of the physician or health agency providing medical services;

- (d) Name, address, and telephone number of the agency and/or mental health professional providing mental health services to the service recipient;
- (e) A list of each article of the service recipient's personal property valued at one hundred (\$100.00) or more including its disposition, if no longer in use; and
- (f) Written accounts of all monies received and disbursed on behalf of the service recipient by the supportive living facility staff.

0940-5-19-.07 SERVICE RECIPIENT RIGHTS IN SUPPORTIVE LIVING FACILITIES.

- (1) Upon admission to the facility, each service recipient must be provided an orientation which includes minimally the following:
 - (a) Explanation of the facility's services, activities, performance expectations, any rules and regulations, and program descriptions;
 - (b) Familiarizing the service recipient with the facility's premises, the neighborhood, and public transportation systems; and
 - (c) Explanation of service recipient rights and grievance procedures.
- (2) Service recipients must not be denied adequate food, treatment/rehabilitation activities, religious activities, mail or other contacts with family as punishment.
- (3) A service recipient must not be confined to his/her room or other place of isolation as punishment. This does not preclude requesting service recipients to remove themselves from a potentially harmful situation in order to regain self-control.
- (4) Each service recipient shall have the right to enjoy time alone.
- (5) No religious belief or practice shall be imposed upon any service recipient.
- (6) Each service recipient shall have the right to be free from mental, verbal, sexual and physical abuse, neglect and exploitation.
- (7) Each service recipient shall have the right to use, keep and control his/her own property and possessions in the immediate living quarters and have the right to reasonable safeguards for the protection and security of his/her personal property and possessions.
- (8) Each service recipient's mail shall be delivered unopened to the service recipient on the day it is delivered to the facility.
- (9) Each service recipient shall have access to a telephone and the right to have a private telephone, at the service recipient's own expense.
- (10) Each service recipient has the right to move from the facility upon notification to the facility and in conformance with the facility's policies and procedures.

- (11) Each service recipient shall have the right to manage his/her own financial affairs. Each service recipient has the right to be free from coercion to assign or transfer to the facility money, valuables, benefits, property or anything of value other than payment for services rendered by the facility.
- (12) Service recipients have the right to participate fully, or to refuse to participate in community activities including cultural, educational, religious, community service, vocational, and recreational activities.
- (13) Service recipients must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the rights of others.
- (14) Service recipients have the right to be accorded privacy and freedom for the use of bathrooms at all hours.
- (15) Service recipients must be permitted to retain and use personal clothing and possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.
- (16) If married service recipients reside in the facility, privacy for visits by spouses must be ensured; and if both spouses are service recipients residing in the facility, they must be permitted to share a room.
- (17) Service recipients have the right to associate and communicate privately with persons of their choice including receiving visitors during hours that balance the needs of the service recipients and the effective operation of the facility and use of the telephone.

0940-5-19-.08 MEDICATION MANAGEMENT IN SUPPORTIVE LIVING FACILITIES.

- (1) The service recipient's ability and training must be taken into consideration when supervising the self administration of medication.
- (2) Prescription medications are to be taken only by service recipients for whom they are prescribed, and in accordance with the directions of a physician.
- (3) Medications must be stored in a clean and locked container which ensures proper conditions of security and administration and prevents access by unauthorized person.
- (4) Discontinued and outdated medications, prescribed and over the counter, and containers with worn, illegible, or missing labels must be disposed.
- (5) Medication requiring refrigeration must be properly stored.
- (6) All medication errors, drug reactions, or suspected overmedication must be reported to the practitioner who prescribed the medication.
- (7) Evidence of the current prescription of each medication taken by a service recipient must be maintained by the facility.

0940-5-19-.09 RECREATIONAL PROVISIONS IN SUPPORTIVE LIVING FACILITIES.

- (1) The facility must provide opportunities for recreational activities appropriate to and adapted to the needs, interests, and ages of the service recipients being served.

0940-5-19-.10 HEALTH, HYGIENE, AND GROOMING PROVISIONS IN SUPPORTIVE LIVING FACILITIES.

- (1) The facility must assist and encourage service recipients in the use of dental appliances, eyeglasses, and hearing aids.
- (2) The facility must assist and encourage each service recipient to maintain a well-groomed and clean appearance that is age and activity appropriate and within reason of currently acceptable styles of grooming, dressing, and appearance.

0940-5-19-.11 CLOTHING PROVISIONS IN SUPPORTIVE LIVING FACILITIES.

- (1) Each service recipient must be provided the level of support and assistance needed in the selection and purchase of clothing.
- (2) The facility must assist each service recipient in securing an adequate allowance of personally-owned, individualized, clean, and seasonal clothes that are the correct size.
- (3) Any marking of a service recipient's clothing for identification purposes must be done in an inconspicuous manner.

0940-5-19-.12 DAY ACTIVITIES IN SUPPORTIVE LIVING FACILITIES.

- (1) The facility must assist and encourage service recipients in making use of daily activities according to the age levels, interests, and abilities of the service recipients. Such day services may include, but are not limited to, part-time and full-time employment, attendance at a day activity center, participation in a vocational rehabilitation program, senior citizens involvement, and regularly scheduled recreational activities.

0940-5-19-.13 WRITTEN AGREEMENT BETWEEN SERVICE RECIPIENT AND FACILITY.

- (1) A written admission agreement must be entered into between the facility and the service recipient. A copy of the written agreement must be kept in the service recipient's file. Such agreement shall contain the following:
 - (a) A current statement of all fees and daily, weekly, or monthly charges and any other services which are available on an additional fee basis for which the service recipient must sign a request acknowledging the additional cost and the services provided in the facility for that charge.
 1. A statement of the home's refund policy when a service recipient moves from the facility;
 2. If the service recipient decides to move, the number of days notice that must be given to the facility;
 3. A listing of the services to be provided to the service recipient by the facility; and
 4. A listing of the items the service recipient will be responsible for.

- (b) The service recipient's authorization and consent to release medical information to the facility;
- (c) A statement that a service recipient may not be required to perform services except as provided in the admission agreement. A service recipient and the facility may agree in writing that a service recipient will perform certain services in the facility if the service recipient is compensated at or above the prevailing rates in the community.
- (d) A listing of the house rules which also address shared space issues.

0940-5-19-.14 ENVIRONMENTAL REQUIREMENTS FOR SUPPORTIVE LIVING FACILITIES.

- (1) After July 1, 2002, all new applicants must have no more than two persons to a room.
- (2) By July 1, 2002, all bedroom space must be at least (80) square feet of bedroom space for single occupancy or sixty (60) square feet of bedroom space per service recipient for multiple occupancy.
- (3) After July 1, 2002, all new applicants must have bathrooms within the facility which are minimally equipped as follows:
 - (a) One (1) private toilet for each four (4) individuals, including staff, who reside in the facility;
 - (b) One (1) lavatory with hot and cold water for each four (4) individuals, including staff who reside in the facility.
 - (c) One (1) private tub or shower with hot and cold water for each eight (8) individuals, including staff, who reside in the facility.

Authority: T. C. A. §§4-4-103, 4-5-202 and 204, and T.C.A. §§33-1-302, 305 and 309.

This notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2002. (10-38)

THE TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the amendment of rules pursuant to Tennessee Code Annotated, Section 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority Building, 460 James Robertson Parkway, Nashville, Tennessee at 11:00 a.m. on the 16th day of December, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505, and (615) 741-2904.

For a copy of this notice of rulemaking hearing, contact: Sara Kyle, Chairman, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37243-0505, and (615) 741-2904.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Subparagraph (a) of Paragraph (2) of Rule 1220-4-1-.10, Reports-Uniform Financial Report Forms, is amended by:

Deleting the word "Commission" as contained therein and replacing it with the word "Authority", such that the amended subparagraph shall read as follows:

(a) Telephone Utility Companies

1. All companies subject to the jurisdiction of the Authority as set forth in T.C.A. § 65-4-101, which are either a subsidiary of a holding company or have in excess of 6000 access lines shall submit monthly to this Authority Monthly Report Form 3.01 within sixty days (60) days after the end of the month covered by the report. The Monthly Report Form shall be completed by each company to the extent data is available.
2. All companies subject to the jurisdiction of the Authority as set forth in T.C.A. § 65-4-101, which are not a subsidiary of a holding company and have less than 6,000 access lines shall submit quarterly to this Authority Quarterly Report Form 3.02 within sixty (60) days after the end of the quarter covered by the report. The Quarterly Report Form shall be completed by each company to the extent data is available.

Authority: T.C.A. §65-2-102.

Adding the following new part:

3. All companies operating pursuant to price regulation under T.C.A. § 65-5-209 shall submit to the Authority the above report annually, for the month or quarter ending in December, or the last month of the company's fiscal year, if different, within sixty (60) days after the end of month or quarter covered by the report.

Authority: T.C.A. §65-2-102.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2002.(10-40)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 02-13 STATEWIDE PROCLAMATION ON THE COMMERCIAL TAKING OF FISH AND TURTLES

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

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

SECTION I. WATERS OPEN TO COMMERCIAL FISHING

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

RIVERS

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

1. CLINCH RIVER - fishing authorized only downstream from Melton Hill Dam. Gill and trammel nets prohibited.
2. EMORY RIVER - fishing authorized only downstream from the Harriman Bridge. Gill and trammel nets prohibited.
3. FORKED DEER RIVER - except that portion of the Middle Fork lying within the boundaries of the Chickasaw National Wildlife Refuge.
4. FRENCH BROAD RIVER
5. HARPETH RIVER - fishing authorized only downstream from State Hwy. 49 Bridge, except that trotlines may be fished upstream of the bridge.
6. HATCHIE RIVER
7. HIWASSEE RIVER - fishing authorized only downstream from U.S. 11 Bridge (Charleston).

8. HOLSTON RIVER
9. LOOSAHATCHIE RIVER - fishing authorized only downstream from the New Raleigh-Millington Road Bridge.
10. MISSISSIPPI RIVER - (except that portion from the Mississippi-Tennessee line upstream to Mississippi River Mile 745, marked by the upper, or northern, tip of Hickman Bar, which is closed. This closure includes McKellar Lake and Wolf River embayment). Wardlow's Pocket and Wardlow's Pocket Chute (except those portions lying within the boundaries of the Chickasaw National Wildlife Refuge), Heathright Pocket, Cold Creek, Cold Creek Chute, lying within the boundaries of Anderson Tully WMA in Lauderdale County are open; all other ponds, lakes, arms, sloughs, bayous, and pockets within the WMA are closed. All sturgeon greater than 30 inches must be returned immediately to the water. All catfish 34 inches and longer must be released immediately.
11. NOLICHUCKY RIVER
12. OBION RIVER
13. RED RIVER - fishing authorized only downstream from U.S. 41A Bridge , except that trotlines may be fished upstream of the bridge.
14. STONES RIVER - fishing closed from confluence with Cumberland River upstream, except that trotlines may be fished upstream of the Cumberland River confluence.
15. WOLF RIVER - Only the section from Germantown Bridge upstream is open to commercial fishing. Gill nets and trammel nets are prohibited. The section upstream of Bateman Bridge in Fayette County is open for trotlines only.
16. CUMBERLAND RIVER - As listed in Section I. RESERVOIRS except from Cordell Hull Dam upstream is closed.
17. TENNESSEE RIVER - As listed in Section I. RESERVOIRS.
18. DUCK RIVER - That portion of the Duck River from its confluence with Blue Creek at approximate DRM 13.2 downstream to the Hustburg pipeline crossing is open year-round to trotlines, hoop nets, and slat baskets. The Duck River from DRM 4.0 downstream to the Hustburg pipeline crossing at approximate DRM 1.4 is open to gill nets and trammel nets from December 1 through January 15. The rest of Duck River downstream is open year-round to all legal commercial gear types. Duck River upstream from its confluence with Blue Creek is closed to all commercial fishing.

RESERVOIRS

Group A: The following reservoirs are open year-round unless otherwise specified to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps. The reservoir boundary for commercial fishing regulations is the full pool elevation unless otherwise specified.

1. BARKLEY
2. CHEATHAM - Commercial fishermen must contract with TWRA and abide by the contract provisions as determined by TWRA in order to commercial fish.

3. CHICKAMAUGA
4. DOUGLAS - Entanglement gear (gill and trammel nets) and hoop nets are prohibited above Point 14 from January through June. Entanglement gear (gill and trammel nets) is prohibited from the mouth to the headwaters of Indian, McGuire, Muddy and Flat Creeks from October through February.
5. GUNTERSVILLE
6. NICKAJACK
7. PICKWICK
8. JOHN SEVIER
9. DAVY CROCKETT (Greene County)

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

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

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

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

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

3. REELFOOT
 - (a) The taking of grass carp (*C. idella*) is prohibited.
4. WATTS BAR - trammel and gill nets are prohibited.
5. OLD HICKORY
 - (a) Trammel and gill nets are prohibited from Highway 231 upstream to Cordell Hull Dam and including the Caney Fork River.
 - (b) Trammel and gill nets are prohibited from Highway 109 upstream to 231 except fishing of legal entanglement nets by whipset or trammeling method are permitted by contract with the Tennessee Wildlife Resources Agency.

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

SECTION II. LICENSE AND TAGGING REQUIREMENTS

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

SECTION III. GENERAL PROVISIONS

- A. Fish and turtles classified as endangered, threatened, or in need of management as proclaimed by the Wildlife Resources Commission may not be taken.
- B. The following fish species may be taken and sold commercially year-round unless otherwise restricted by this proclamation, other Tennessee Wildlife Resources Commission proclamations or rules, or Tennessee Code Annotated.

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

Channel catfish	<i>Ictalurus punctatus</i> (Rafinesque)
Flathead catfish	<i>Pylodictis olivaris</i> (Rafinesque)
Freshwater drum	<i>Aplodinotus grunniens</i> Rafinesque
Yellow bass	<i>Morone mississippiensis</i> Jordan, Eigenmann

- * The taking and possession of blue catfish and paddlefish from Cherokee Reservoir by commercial fishing methods is prohibited.
- ** shall they be possessed during these periods unless they were previously taken during a legal taking season. Those persons possessing paddlefish or sturgeon or parts thereof during the periods from April 24 through November 14 must have in their possession bills of lading denoting pounds of flesh or eggs (or both if applicable) in their possession, name and address of supplier/fishermen, and date of harvest or date obtained. Paddlefish must be 34 inches, eye to fork length or blocked (with the tail remaining on the fish) a minimum of xx inches from the fork of the tail to the flesh behind the gill arch (measured along the side of the fish), to be legal for harvest. Shovelnose sturgeon must be 30 inches or smaller to be legal for harvest. Paddlefish less than 34 inches must be returned immediately to the water. Shovelnose sturgeon greater than 30 inches must be returned immediately to the water. Paddlefish 34 inches and larger may not be possessed alive away from the harvested waters. Any paddlefish and/or shovelnose sturgeon from which eggs are taken must be kept. The cutting or mutilation of paddlefish to check for eggs is prohibited. A 2-inch portion of ovary must remain in each harvested paddlefish while on the water or immediately adjacent to the water where harvested. Paddlefish eggs removed from ovaries must be kept in separate containers - eggs from one fish only per container. Paddlefish may not be kept alive except for permitted aquaculture purposes.
- C. Only the Common Snapping Turtle, *Chelydra serpentina serpentina*, with a carapace (upper shell) length of at least 12 inches, measured front to back, may be taken year-round and statewide without limit by any legal commercial fishing method.
- D. Only at Reelfoot Wildlife Management Area, all sizes and species of turtles except the box turtles and those covered in Item A. above may be taken by any legal commercial fishing method.
- E. Commercial fishing gear is prohibited within 1,000 yards downstream of any TVA or Corps of Engineers Dam, within 300 yards of any commercial boat dock or resort, or within 100 yards of the mouth of any stream, river, or inlet at any time. For purposes of this proclamation, wingwalls and lock walls are considered to be a part of the "dam", and measurements will be made from their downstream end.
- F. No catfish less than 8 inches in length may be kept alive.
- G. Gill nets, trammel nets, turtle traps, and trotlines must be run at least once every 24 hour period. Other types of commercial fishing gear must be run at least once every 72 hour period.
- H. Hoop nets, fyke nets, trap nets, and pound nets with a mesh size of one (1) inch or smaller on the square may be fished only during the months of October, November, December, January, February, March, and April, except the Mississippi River, which is open year-round.
- I. A fish seine may be used in private waters and in waters which are replenished by overflows from the Mississippi, Tennessee, Obion, Hatchie, Wolf, Loosahatchie, and Forked Deer rivers, but which during the dry season of the year have no outlet to these rivers. Fish seines as defined in this proclamation may be used in the dewatering areas of Kentucky Reservoir.
- J. No commercial fishing gear shall be set so as to extend more than three-quarters (3/4) across any stream, river, chute, or embayment.
- K. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, paddle-

fish carcasses may not be altered in such a manner that the length of the fish may not be determined (measuring 34 inches from the eye to the fork in the tail or blocked a minimum of xx inches from the fork in the tail to the flesh behind the gill arch, measured along the side of the fish).

- L. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, shovel-nose sturgeon carcasses may not be altered in such a manner that the length of the fish may not be determined.
- M. Commercially harvested paddlefish and sturgeon or parts thereof taken from the waters of the state and sold in-state must be marketed to a licensed wholesale fish dealer.

SECTION IV. COMMERCIAL FISHING GEAR

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

1. **Slat Basket**

A slat basket is defined as a device used for taking of commercial fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats or splits which are placed lengthwise and so constructed that there must be a minimum of four openings in the catching area, each being at least 1½" wide and 6" long.

2. **Hoop Net**

A barrel shaped net made of synthetic cotton, linen, or nylon, and supported by hoops. A hoop net is also known as a barrel net, set net, funnel net, and trap net. One or more throats are attached inside the hoop structure. Legal mesh size of hoop nets is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for special restriction on 1" or smaller sizes.

3. **Fyke Net, Trap Net and Pound Net**

A fyke net, also known as a wing net, is a hoop net to which as many as three (3) wings or leads may be attached. Trap nets or pound nets which have rectangular or box shaped traps shall also be legal by this definition. The wings or leads are equipped with floats and sinkers, and the webbing of the wings shall be constructed of twine not smaller than Number 7 in nylon or Number 9 in cotton or linen. The maximum length of each wing is 50 feet. The legal mesh size of fyke nets and wings or leads is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for restriction on 1" or smaller sizes.

4. **Trammel Net**

A trammel net is defined as a net having three (3) webs (nets) hung to a single top (float) and bottom (lead) line. The two outside webs are called walling, and the inside web is called webbing. The inside webbing shall have a mesh size of not less than three (3) inches on the square. Effective April 24, 2003, webbing with square mesh greater than 4.0 and less than 6.0 inches is prohibited except on the Mississippi River where webbing with square mesh greater than 4.0 and less than 5.0 inches is prohibited. The outside walling shall have a mesh size of not less than six (6) inches on the square. The maximum mesh size of the outside walling shall consist of vertical ties or hobbles on each side of the webbing at six (6) foot intervals along the float and lead line. A net may not be hobbled to less than two thirds the height of the net. Maximum length of a trammel net is three hundred (300) yards. Trammel nets must be fished in a stationary manner except in the Mississippi River.

5. Gill Net
A gill net is defined as a single net attached to float and lead lines. Gill nets must have a minimum mesh size of 3 inches or greater. Effective April 24, 2003, gill nets with square mesh greater than 4.0 and less than 6.0 inches are prohibited except on the Mississippi River where square mesh greater than 4.0 and less than 5.0 inches are prohibited with a minimum mesh size of three (3) inches on the square. The maximum length of a gill net is three hundred (300) yards. Gill nets must be fished in a stationary manner except in the Mississippi River.
6. Fish Seine
A fish seine consists of a float and lead line to which netting is attached. The netting of the seine shall be constructed of twine not smaller than Number 7 nylon or synthetic fiber or Number 9 cotton or linen. The mesh size of seines shall be three (3) inches or larger on the square. Seines must be constantly attended, and may not be fished in a stationary manner.
7. Turtle Traps
A turtle trap is defined as a trap made of linen or cotton netting, wood or cane slats or strips, wire, or other similar materials with a minimum mesh size of three (3) inches on the square. Such traps must be constructed in a way as to permit the escape of fish through the three (3) inch openings. Turtle traps as defined herein may only be used in waters open to commercial fishing. Turtle traps must be set so that a portion of the catching area is positioned above the water.
8. Cast Net
A cast net is defined as a net having a maximum radius of ten (10) feet and a mesh size (square measure) of not less than one-fourth (1/4) inch and not greater than one (1) inch.
9. Trotline
A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must be at least 24 inches apart.
10. Dip Net
A dip net is a net constructed from natural or synthetic fibers which is attached to a frame that is attached to a pole. A dip net may only be used to commercially harvest turtles from Reelfoot Wildlife Management Area.

SECTION V. REPORT REQUIREMENTS

Commercial fishermen and wholesale fish dealers are required to submit reports to the Tennessee Wildlife Resources Agency on forms provided. Commercial fishermen and wholesale fish dealers must contact the Fisheries Management Division at (615) 781-6577 within 5 days upon purchasing a license and request the required forms. In addition to the required reports, Paddlefish and/or Sturgeon Permit Holders must provide samples, as instructed, to TWRA along with the tags if they were required. Tags, when required, must remain on the paddlefish and sturgeon until the fish is in the final stage of processing. Commercial fishermen marketing out-of-state must provide TWRA with a commercial fish export form and any additional requested information on forms provided by TWRA. Copies of the export form must be submitted to TWRA monthly as instructed. Commercial fishermen harvesting turtles or parts thereof from the state's waters must provide requested information to TWRA. Commercial fishermen must issue receipts for sales to individuals, businesses, or groups. Copies of the receipts must be submitted to TWRA monthly as instructed.

Wholesale fish dealers must issue a commercial fish receipt to commercial fishers for each transaction in which they purchase fish or turtles and provide requested information. Wholesale fish dealers, private individuals, and businesses importing paddlefish and sturgeon or parts thereof into Tennessee must have bills of lading denoting pounds of flesh or eggs (both if applicable), name and address of supplier, and date of import. Wholesale fish dealers, private individuals, and businesses importing or purchasing paddlefish and sturgeon and/or eggs for commercial purposes must issue a commercial fish receipt to commercial fishers and provide requested information and samples to TWRA. Wholesale fish dealers must submit copies of the receipts to TWRA monthly as instructed. Wholesale fish dealers purchasing turtles or parts thereof must provide requested information to TWRA.

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

SECTION VI. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 01-12, dated October 25, 2000. Proclamation 02-13 will be effective immediately. These regulations will be in effect until October 1, 2005.

Proclamation 02-13 received and recorded this 16th day of October, 2002. (10-15)



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 October 1, 2002 and ending October 31, 2002..

RILEY C. DARNELL
Secretary of State

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